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Complaint for Injunction and Other Relief

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY
IN CHANCERY

No. 66C-5523 (Thomas E. Lee)

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

Plaintiffs, ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation, by their undersigned attorneys, bring this complaint against INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, and allege:

1.

Plaintiffs are engaged in the business of owning and operating cruise ships in the transportation of persons from Port Everglades in Broward County, Florida, and from the municipal docks in Miami, Dade County, Florida, to various vacation points of interest on the islands west and southwest of Florida known as the West Indies and Caribbean areas. The ships involved are the SS ARIADNE which has a

capacity of 327 passengers and is making two trips weekly out of Port Everglades, and the SS BAHAMA STAR which has a capacity of 700 passengers and is making two trips weekly out of the Port of Miami.

2.

The defendant is a labor organization, an unincorporated association composed of persons who perform the labor of loading and unloading ships at Miami, and defendant maintains an office at 816 N.W. Second Avenue, in Miami, Florida.

3.

Neither the defendant nor any of its members is employed to perform any work in connection with the operation of the cruise ships which are owned and operated by the plaintiffs, respectively, and defendant does not represent any of the employees who operate the ships. Furthermore, neither the defendant nor its members holds themselves out for any employment in the operation of these ships or either of them.

4.

Nevertheless and notwithstanding the complete lack of any privity between the defendant and the operation of the cruise ships on May 23, 1966, the defendant established a picket line on the public docks adjacent to the berths where the ships operated by the plaintiffs were being unloaded and loaded. One picket was placed on the Port Everglades dock opposite the SS ARIADNE and one was on the Miami docks opposite the SS BAHAMA STAR. Identical signs were carried by the pickets at Port Everglades and at the Miami docks except with the respective ship's names on the top, as shown below:

ARIADNE REFUSE To Maintain Adequate Safety Conditions FOR PASSENGERS & EMPLOYEES International Longshoremen's Association Local 1416 Miami, Fla.	BAHAMA STAR REFUSE To Maintain Adequate Safety Conditions FOR PASSENGERS & EMPLOYEES International Longshoremen's Association Local 1416 Miami, Fla.

While picketing alongside the ships the pickets walked among the embarking or disembarking passengers so that their presence was conspicuous and noticed by the passengers. Defendant also passed out handbills to the Miami passengers implying that the vessels were unsafe (see Exhibit A, incorporated herein).

5.

The signs carried by the defendant's pickets contain statements that are false, untrue and libelous.

6.

There is no labor dispute between plaintiffs and defendant. Plaintiffs do not use the services of defendants at the Port of Miami or at Port Everglades. Furthermore, there is no labor dispute between plaintiffs and any of their respective employees, none of whom is represented by defendant. The aforesaid foreign corporation plaintiffs operate, respectively, the foreign flag ships SS BAHAMA STAR and SS ARIADNE. The seamen on said ships are governed by Ship's Articles of Panama and Liberia, respectively.

7.

Plaintiffs allege that by reason of the facts set forth above defendant's picketing is unlawful and the publishing of the libelous statements on the signs carried by the pickets constitutes an unlawful and malicious interference with the business relationships of the plaintiff.

8.

The said unlawful actions of defendant are damaging plaintiffs' business and will have the natural effect of causing customers to turn away. Defendant is creating false impressions among the public that the plaintiffs operate unsafe vessels and otherwise interfering with the business of plaintiffs and their relationships with their passenger and employees. Such damages are irreparable and will continue unless defendant is enjoined. Plaintiff has no adequate remedy at law for the continuing damages inflcted by defendant as aforesaid.

WHEREFORE, plaintiffs pray that this Court find, order and decree:

1. That defendant, its officers, agents, allies and all others acting in concert or participation with it, be temporarily restrained from:

(a) Picketing or patrolling at or in the vicinity of the docks where the ships SS ARIADNE and SS BAHAMA STAR load and unload.

(b) Intimidating or interfering in any manner or by any means with any passengers, including patrol or patrols of plaintiffs' dock facilities either by picketing, handbilling or by any kind of statement, written or oral, which in any man-

ner or means seeks to induce any passenger or passengers, patron or patrons of plaintiffs to withhold his patronage or business.

2. That a hearing upon due notice be held to temporarily enjoin the activities set out in paragraph (1) above.

3. That upon final hearing said temporary injunction be made permanent.

4. That judgment be entered against defendant for such damages as the plaintiffs have suffered by reason of the said unlawful and malicious acts of defendant.

5. That the plaintiffs have such other and further relief as to the Court seems reasonable and just.

MILLER, SCHENERLEIN & BABE
100 Biscayne Boulevard North
Miami, Florida

By RICHARD M. LESLIE
Attorneys for Plaintiffs

SHUTTS & BOWEN
First National Bank Bldg.
Miami, Florida

STATE OF FLORIDA,
COUNTY OF DADE

Before me, the undersigned authority, personally appeared H. N. BOUREAU, who, being duly sworn, deposes and says that he has read the above and foregoing Complaint

and that the matters and things alleged therein are true to the best of his knowledge, information and belief.

.....

Affiant, Counsel for Plaintiffs

Sworn to and subscribed before
me this ..... day of May, 1966.

.....

NOTARY PUBLIC, State of Florida
My commission expires:

Exhibit A

WARNING!

Is Your Cruise Ship A Floating Death Trap?

Can A Sub-Standard Foreign Flag Cruise Ship Turn Your Holiday Into A Holocaust?

You, I am sure, are aware of the old adage, that experience is the best teacher. Yet, thousands of unsuspecting Americans continue to place their lives in jeopardy every day on cruises aboard foreign flag floating fire-traps. The sinking of the Yarmouth Castle was an "experience" of which all Americans should take heed, as to the unsafe conditions existing today in foreign cruise ships. The Yarmouth Castle flew under a Panamanian flag and when it sank, 90 lives were lost.

What can passengers of these so-called "luxurious" cruise ships like the "Yarmouth Castle" do to protect themselves? The answer is—know your ship. All ships sailing out of U.S. ports are inspected by the U. S. Coast Guard. The U.S. Coast Guard can enforce U. S. Safety standards only on U. S. ships. Ships under foreign flags are subject to far less stringent regulations than are those under U. S. flags. There is a vast difference in the safety regulations which apply to ships of different countries—and the difference can be a matter of life or death. The strictest safety regulations of all are those of the United States. Yet, despite the fact that a majority of all the cruise ships that leave the ports of Miami and other United States ports, are American owned, they carry a foreign flag. Why is this? The answer is simple, in that in operating under a "flag of convenience" offered by small foreign countries such as

Exhibit A

Liberia and Panama, whose safety standards are minimal, cruise lines then can ignore construction standards, the equipment, the age limits, the regular inspection, overhaul requirements and other safety regulations which U. S. law sets for all our ships.

Every passenger who enters upon any cruise ship leaving out of the ports of Miami or any port in the United States, should be wary of this cruise ship if it flies a foreign flag, yet is under American or United States ownership. Check and see whether or not safety regulations are being observed by this foreign cruise ship.

The tragic disaster of the Yarmouth Castle revealed intolerable and shocking deficiences in that vessel. There was no life boat drill; life belts were in short supply and not readily available; the lifeboat davits jammed due to poor maintenance; passengers were not alerted to the fire and a distress signal was never sent (there was no radio officer on duty at the time). That the toll was no higher was the result of fortunate circumstances—calm seas and the presence nearby of rescue vessels.

The occurrence of this disaster on the high seas, should surely be an experience. A lesson to all would-be passengers of such cruise ships, for this Miami-based foreign flag ship would not have been allowed out of the port of Miami if it had flown an American flag, and had therefore been subject to stringent U.S. Coast Guard safety standards and regulations.

Don't be fooled by the often repeated statements since the Yarmouth Castle disaster, that this was an unusual occurrence and cannot happen again. The history of cruise ship disasters is replete with examples just like the Yarmouth Castle disaster, that is, American-based and owned

cruise ships operating under a foreign flag, going down in flames or colliding with other vessels, because of poor safety standards. Fires on foreign flag passenger ships have claimed 378 lives in the past five years. Yet unscrupulous ship operators are permitted to continue to induce the unwary public to book passage on a "junkyard flotilla" of ships no better than the Yarmouth Castle, which was a worn-out 38 year old former New England overnight boat.

"Protect yourself". The Coast Guard is nearly helpless, under present laws, to protect you from the hazards of traveling on this "junkyard flotilla" of ships. Check every cruise ship that you book passage on, that carries a foreign flag, to determine whether or not in conforms to the safety regulations established by the Coast Guard. Don't be lured by these Sunday advertisements, of a "luxurious cruise in the Caribbean", for this cruise on a sub-standard foreign flag ship may prove to be a death trap.

Defendant's Special Motion to Dismiss For Lack of Jurisdiction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[Title Omitted in Printing.]

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys and files this their Special Motion to Dismiss and/or Quash the Complaint and says:

1. Defendant moves to dismiss and/or quash the Complaint and cause on the ground that this Court does not have jurisdiction over the subject matter of this suit.

2. That the Plaintiffs have charged the Defendant Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act.

3. That the Plaintiffs are engaged in activities which affect interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction over this matter or in the alternative that the labor disputes involved herein affects interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction of the matters alleged in the Complaint.

4. That by virtue of the fact that Interstate Commerce and/or Foreign Commerce is involved or affected and that by virtue of the fact that the Plaintiffs have charged in their Complaint that the Union is engaged in an activity which is

either prohibited or protected by the National Labor Relations Act, sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activity nor may any State Court invoke its injunctive process to prohibit such activity.

WHEREFORE, Defendant prays that this Court investigate this matter to determine whether interstate commerce or foreign commerce is involved or affected, and thereupon dismiss or quash the complaint.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

[Certificate of Service omitted in printing.]

Defendant's Motion to Dismiss and/or Quash

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[Title Omitted in Printing.]

COMES NOW the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through its undersigned attorneys and without waiving its Special Motion to Dismiss and/or Quash for Lack of Jurisdiction heretofore filed in this cause, files this, its Motion to Dismiss and says:

1. Defendant moves to dismiss the complaint and cause on the ground that the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the first, fifth, ninth, tenth and fifteenth amendment to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of Florida.

WHEREFORE, Defendant prays that this Court dismiss or quash the complaint.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

[Certificate of Service omitted in printing]

• • • • •

Order

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY

Case No. 66C-5523 (LEE)

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

ORDER

This cause having come on for Hearing on the verified Complaint of the Plaintiffs, Ariadne Shipping Company Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation, and on the several Motions of the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, to Dismiss, the Court having heard testimony, argument of counsel for the respective parties, having examined the file and being fully advised in the premises, it is

ORDERED, ADJUDGED and DECREED that all the Defendant's Motions be and the same are hereby denied.

Order

Further ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this cause.

Further ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida Law; that Plaintiffs are suffering, and will continue to suffer irreparable injury unless enjoined; it is therefore

ORDERED that pending final Hearing in this matter Defendant, its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiffs' vessels are unsafe;

3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs.

Order

Further Ordered, Adjudged and Decreed that the Plaintiffs post a Bond in the total amount of Five Thousand Dollars ($5,000.00),

Done and Ordered in Chambers, in Miami, Dade County, Florida, this 26th day of May, 1966.

Thomas E. Lee, Jr.
Judge Circuit Court

Answer to Complaint for Injunctive Relief

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

[Title Omitted in Printing.]

COMES Now, the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, by and through its undersigned attorneys, and files this, its Answer to Complaint for Injunctive Relief, without waiving its defense that this Court lacks jurisdiction over the subject matter of this suit, and says:

FIRST DEFENSE

That this Court lacks jurisdiction over the subject matter of this action by virtue of the fact that interstate and/or foreign commerce is involved or affected, and by virtue of the fact that the Plaintiffs have charged the Defendant Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act, and that, therefore, sole jurisdiction of this matter is in the jurisdiction of the National Labor Relations Board, and that this Court may not enjoin the activities complained of in the Complaint.

SECOND DEFENSE

That the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the Free Speech provisions of the First, Fifth, Ninth, Tenth and Fifteenth Amendments to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of the State of Florida, and that, therefore, due

to the fact that the activities charged to the Defendant Union are protected by the Free Speech provisions of the United States Constitution and by the Florida Constitution, as enumerated above, this Court may not enjoin said activities.

THIRD DEFENSE

That the Complaint fails to state a cause of action for which relief can be granted, in that the Complaint fails to allege that the activities charged to the Defendant Union were for unlawful purposes, and that the picketing was conducted in an illegal manner.

FOURTH DEFENSE

That the Plaintiff corporations who have instituted the instant suit in this Court are foreign corporations, i.e., a Liberian corporation, and a Panamanian corporation; that said corporations are not authorized to do business in the State of Florida, since they have not obtained a permit to transact business in this State pursuant to Florida Statute 613.01. The failure of these foreign corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of this State, pursuant to Florida Statute 613.04. Reference is made to Defendant's Exhibit A, attached hereto.

FIFTH DEFENSE

That this Court lacks venue over this cause insofar as it relates to the Plaintiff, Ariadne Shipping Company, Limited, a Liberian corporation, in that the activities charged by the said Plaintiff corporation in the Complaint against the Defendant Union, show that this Plaintiff corporation does business solely in Broward County, Florida, and that the picketing and handbilling activities complained of by

this Plaintiff corporation as allegedly conducted by the Defendant Union were conducted exclusively against the Plaintiff corporation in Broward County, Florida, and that, therefore, sole jurisdiction of this cause insofar as it relates to the activities of the Defendant Union against the Plaintiff corporation, Ariadne Shipping Company, Limited, a Liberian corporation, lies in Broward County, Florida.

SIXTH DEFENSE

1. Defendant is without knowledge as to the allegations in Paragraph 1 of the Complaint, and, therefore, neither admits nor denies said allegation, and demands strict proof thereof.

2. Defendant admits Paragraph 2 of the Complaint, insofar as it clearly states that the Defendant Union is a labor organization, an unincorporated association; that Defendant Union maintains an office at 816 Northwest 2nd Avenue, Miami, Florida, and that jurisdiction of this Defendant Union encompasses the loading and unloading of ships at Miami, Florida. Defendant denies all other allegations of such Paragraph 2, which either by inference or by allegation, allege that the jurisdiction of the Defendant Union is limited to the labor of loading and unloading ships at Miami, Florida.

3. Defendant denies the allegations of Paragraph 3 in the Complaint.

4. Defendant admits that it engaged in picketing and handbilling activities on the dates and at the premises alleged in Paragraph 4 of said Complaint, and admits that the legend on the picket signs as portrayed in Paragraph 4 of said Complaint is a correct portrayal of one of the

legends utilized by the Defendant Union on its picket signs. Defendant denies all other allegations of said Paragraph 4.

5. Defendant denies Paragraphs 5, 6, 7 and 8 of the Complaint.

SEVENTH DEFENSE

As and for an additional affirmative defense, Defendant alleges that a labor dispute existed between the Labor Union and the Plaintiff Corporations, and that this labor dispute is evidenced not only by the legend on the picket signs, as alleged in the Complaint, but is further evidenced by an additional legend utilized by the Defendant Union, said legend not alleged in the Complaint, and said legend stating that the Plaintiff Corporations maintain sub-standard wages and working conditions lower than those established in the area by the Defendant Union.

EIGHTH DEFENSE

As and for an additional affirmative defense, Defendant alleges that the injunctive order entered by this Court on the 26th day of May, 1966, which enjoined the Defendant Union from engaging in certain activities, goes beyond the scope of the allegations of the Complaint, in that it enjoins the Defendant Union from engaging in activities which were not complained of in the Complaint.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant
By ALLAN M. ELSTER
For the Firm

[Certificate of Service omitted in printing.]

• • • • •

Motion to Dissolve Temporary Injunction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[Title Omitted in Printing.]

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys, and files this, their Motion to Dissolve and/or Vacate Temporary Injunction, and as grounds for said Motion, says:

1. That on the 26th day of May, 1966, this Court entered a Temporary Injunction in the cause herein, enjoining the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, from engaging in picketing and handbilling directed against the Plaintiff corporation.

2. The evidence now established shows that this Court did not and does not have jurisdiction of the subject matter of this suit, and that sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activities, nor invoke its injunctive processes to prohibit such activity.

3. That the evidence now established further shows that the Plaintiff corporations, who have instituted the instant suit in this Court, are foreign corporations, i.e., a Liberian corporation, and a Panamanian corporation, said corporations not authorized to do business in the State of Florida, as they have not obtained a permit to transact business in this State, as required under Chapter 613 of the Florida Statutes. Reference is made to the Certificates of the State

of Florida, Office of the Secretary of State, attached hereto, and made a part hereof, and labeled Defendants Exhibits "A" and "B"; that the failure of these corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of the State, pursuant to Florida Statute 613.04.

WHEREFORE, the premises considered, the Defendant Union prays that this Court dissolve and/or vacate the Temporary Injunction heretofore entered, and thereafter, dismiss or quash the Complaint, and dismiss this lawsuit.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES

Attorneys for Defendant

By Allan M. Elster
For the Firm

[Certificate of Service omitted in printing.]

• • • • •

Order Amending Answer Nunc Pro Tunc

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

IN CHANCERY

CASE NO. 66C-5523 (LEE)

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP CO., S.A., a Panamanian corporation,

Plaintiffs,

—VS—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

ORDER AMENDING ANSWER NUNC PRO TUNC

THIS CAUSE, coming on to be heard, on the motion of Defendant, and Stipulation of respective counsel for Plaintiff and Defendant, for an Order permitting the Defendant to amend its answer, nunc pro tunc, to include therein the defense that the picketing engaged in by the Defendant was protected by the Fourteenth Amendment to the Constitution of the United States, and the Court, recognizing the Stipulation between counsel, and being otherwise fully advised in the premises, it is, upon consideration,

ORDERED, ADJUDGED AND DECREED, that the Defendant's Answer to the Complaint is hereby amended, nunc pro

tunc, to insert therein, in its Second Defense, the word Fourteenth, so that the third line of the said Defense shall read as follows:

"... provisions of the First, Fifth, Ninth, Tenth, Fourteenth and Fifteenth Amendments ..."

DONE AND ORDERED in Chambers in the Dade County Courthouse, Miami, Florida, this 1 day of May, 1967.

THOMAS E. LEE, JR.
Judge, Circuit Court

• • • • •

Transcript of Hearing

(Before Florida Circuit Court, Dade County)

• • • • •

[73] Mr. Leslie:

• • • • •

[75] • • • One picket was placed on the Port Everglades dock opposite the S.S. Ariadne. One was placed on the Miami docks opposite the S.S. Bahama Star. Identical signs were carried by the pickets at Port Everglades and at the Miami docks except with the respective ship's name on the top.

> Refuse to Maintain Adequate Safety Conditions For Passengers and Employees. International Longshoremen's Association, Local 1416.

These detriments certainly are false, untrue and libelous and misleading, and certainly are not a subject for this union.

In our memorandum in support of this motion, we call the Court's attention to what I think are the two closest cases in the State of Florida. Young Adults for Progressive Action versus B & B Cash Stores, 151 (So.2d) 877, and NAACP versus Webb City, [76] 152 (So.2d) 179.

The reason we think they are so significant is that they went in for temporary injunctive relief—remedy and other relief extremely early in these cases, making the same complaints we are making: the picketing was an interference with plaintiffs' lawful business.

Noting the distinction between picketing and protected free speech, the court affirmed injunctive relief.

There is no way of telling how many people did not sail on the S.S. Bahama Star and how many people did not sail on the S.S. Ariadne—The reason the court did grant injunctive relief in most of these cases is it said: "This was not interfering with free speech and they took extreme care to cite Supreme Court cases.

Consequently, I will not reiterate it, if the Court can find time to read our memo.

As to free speech, this is much further than free speech; and that is why I think it is significant where they quoted from the United States Supreme Court case, talking about the domain of liberty, and [77] saying:

"... but while picketing is a mode of communication, it is inseparably something more and different. Industrial picketing is more than free speech, since it involves patrol of a particular locality, and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated ..."

That is the whole essence here, your Honor. It is one man walking up and down with a sign, but he is doing irreparable injury to the ships.

I believe we also cited in there the cases that say that this Court does have jurisdiction because that goes to two aspects: one, the Florida courts have done this in prior cases; and the United States Supreme Court has held this is not an area where you have a national labor relations court of dispute or a labor dispute. It is something completely different; and here again, I would like to reiterate that—

The Court: I read your memo.

Mr. Leslie: Thank you, your Honor.

And here again, besides, I think, our [78] contentions are significant in these cases.

The signs in Webb City were asking for Negroes to be employed in the store. Here they are asking for labor union people to be employed on a ship.

In other words, they are saying, "We are unhappy that you are not employing our people."

The Court: There is no labor dispute here, is there?

Mr. Leslie: None whatsoever.

The Court: As I understand, you say there is a labor dispute here.

Mr. Gopman: Yes, sir, there is.

The Court: How can there be a labor dispute?

Mr. Gopman: Picketing because of the substandard wages paid to the employees who do the loading and unloading of these vessels. They did not mention that in the lawsuit, but they picketed for that as well.

They would not conduct an election among the employees of the ship, but this does not mean we do not have the right to picket when they [79] use employees who do work on American soil and pay them substandard wages—to protest against that.

The Court: Go ahead; he says it is a labor dispute.

Mr. Muller: Your Honor, we saw at the time the Complaint was filed, the single sign saying: REFUSE TO MAINTAIN —failing to maintain safety standards. It had no other sign saying: substandard wages.

But, even assuming there was, the only interest we have and this Court should have is whether or not a labor dispute exists is with reference to the National Labor Relations Board's jurisdiction.

Now, in the Webb City case, and in the B & B Cash Stores, the pickets were complaining about working conditions—that of the employees of the store, failure to advance the employees or failure to do this.

Very clearly, had the National Labor Relations Board jurisdiction, it could very well have taken the dispute—

The Court: Let me interrupt you for a minute. I have a long-distance call.

(Short Recess)

Mr. Muller: While our allegations and, [80] I think, our proof will show that the signs presently being maintained were strictly that they fail to maintain safety standards.

I indicated to the Court this would not be in any way controlling. Our position is that the existence of a labor dispute or no labor dispute has only entered into these cases for the purpose of advancing the National Labor Relations Board's Federal jurisdiction in these cases. There is no Federal jurisdiction in this case.

The Court: By virtue of the fact it is a foreign flag vessel?

Mr. Muller: Right.

There is no National Labor Relations Board jurisdiction. That being the case, we have to fall back exclusively on Florida State law.

The signs are clear interference with our lawful business activity.

The cases we cited indicated that the end cannot justify the means.

The Court: The basis of your suit then is a tort action.

Mr. Muller: That is right.

[81] Mr. Gopman: Then, if the basis of his suit is a tort action, he does not have the right to come here and ask for an injunction. He should take it some place to seek a remedy.

Before we get into that, we have a motion to dismiss on the ground the same cases are before the Board. Motion to

dismiss on the grounds of enjoining of this picketing would violate the First, Fifth and Fourteenth Amendments to the Constitution; that is, free speech, purely.

• • • • •

[82] Another motion to dismiss, your Honor, on the grounds that the Complaint totally fails to state a cause of action. There is not one case of injunctive relief against picketing; or one where the Court has failed to find that this was an illegal motive or illegal purpose in the picketing.

The picketing has to be carried on either in an illegal manner or illegal objective—

The Court: That is a question of fact.

Mr. Gopman: They have not alleged an illegal objective. They have not said this picketing is for any purpose. They have not said it is for the purpose of forcing anybody to hire anybody. They have not said it is for the purpose of forcing anybody to cease doing business with anybody. They are only saying they are losing business because of it.

In Webb City, the court found that the illegal objective was that the NAACP attempted to gain for Negroes employment rights. They said that was a social and not labor objective. The court specifically said that in one of the early portions of the case, that if it was a labor objective they would have no jurisdiction, but the court said it was a social objective. That is, a social objective they seek [83] and, therefore, they do have jurisdiction.

In this particular case, they have not set forth an illegal objective. They do not bring anybody in to testify about that. We have a witness who will testify.

As we say, there is nothing illegal at all about this—

The Court: Let us take his testimony, the testimony of this witness.

Thereupon—

John Sheehan—for Defendant—Direct

JOHN SHEEHAN, was called as a witness on behalf of the defendant and, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gopman:

Q. Please state your full name. A. My name is John Sheehan.

Q. And your address? A. I reside at 685 Northeast 135th Street, North Miami, Florida.

Q. With whom are you associated, with what organization? [84] A. I am the local business agent for the National Maritime Union of America.

Q. Mr. Sheehan, are you familiar with the two ships known as the Bahama Star and the Ariadne? A. I am.

Q. Have you been aboard those ships? A. I have.

Q. Tell me, if you can, the safety conditions you have found from your observations aboard those ships.

Mr. Leslie: Your Honor, we object to this testimony as to safety conditions aboard the ship. We are talking about the longshoremen. We are not talking about a seafarer's situation. This is not relevant, your Honor.

The Court: I will sustain the objection. The safety conditions aboard the ship have nothing to do with this.

Mr. Gopman: If you read the sign, your Honor, that is exactly what we are complaining about in the sign—the safety conditions are improper.

The Court: You have no labor union working for the ship.

Mr. Gopman: The fact we do not, is [85] immaterial.

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[86] Mr. Gopman: The issues are whether it is libelous or false.

Couldn't he testify as to what the conditions are? That is exactly what is said on the signs. They refused to maintain adequate safety conditions for passengers and employees.

The Court: I have sustained the objection.

I do not think it would make any difference if they agreed, if counsel for plaintiffs agreed that they had substandard safety conditions; and I think the Court could probably take judicial notice of that—I am not going to do so at this point—but these foreign flag vessels do have substandard safety conditions as compared with American flag vessels.

Can you agree with that, counsel?

Mr. Muller: I wouldn't say substandard. I would use the term "different."

The Court: They have a lesser standard or less minimum standard required than do American ships.

I think that it goes without saying and [87] everyone knows that American flag vessels require, say, three watches on the ship whereas a foreign flag vessel would not do so.

Mr. Muller: We would agree, under the laws of Panama and Liberia, we are not required to do so; but we do meet every standard that the Coast Guard has asked us to meet here in Miami.

The Court: I understand that the Coast Guard has some authority on ships in port. They are not going to let a ship with dynamite come up here and park in our ports.

Mr. Leslie: They go even further than that. The only difference is that some of these ships are under the Grandfather Clause for—

The Court: I understand all that. What I am saying is: it really doesn't matter whether it is true or not. We have a sole concern here, which is whether this picketing is a tort under the theory advanced by the plaintiffs.

I have your motions under advisement, but the issue is as he says: it's a tort under the Florida laws that these ships are engaged in.

The cases cited, B & B Cash Stores and [88] Webb City have to do with tort types of picketing; and they advanced that this type of picketing is not against free speech as provided in the Constitution.

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[89] Mr. Muller: I have a whole series and I know counsel is familiar with them. That is, Fontainebleu versus Local 255—

The Court: What are we talking about?

Mr. Muller: Labor dispute injunction.

The Court: This Circuit Court has no jurisdiction over labor disputes?

Mr. Muller: In this regard, it does. The cases I am citing to the Court are series of hotel cases. This is prior to the time the Supreme Court of [90] Florida recognized the pre-emption doctrine. Since we do not have the issue of pre-emption in this case, the case is applicable. That is, what the Florida Supreme Court said about these disputes.

The Court: I understand what you are saying.

Mr. Muller: The only reversal was the pre-emption doctrine.

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Mr. Gopman: With respect to whether or not it is a labor dispute, we refer to Marine Cooks and Stew-

ards AFL versus Panama Steamship Company, 362 (U.S.) 365; whereas, the United States Supreme Court ruled:

". . . A Federal District Court erroneously determined that, notwithstanding the existence of a labor dispute within the meaning of the Anti-Injunctive provisions of the Norris-LaGuardia Act, it had jurisdiction [91] to enjoin a union from circling a vessel with a picket boat as it entered an American port, on the ground the union's activities amounted to unlawful interference with foreign commerce and with the international economy of a vessel registered under the flag of a friendly foreign power.

"Such condition was not illegal under any statute or persuasive United States authority, nor was it concerned with the internal economy of the vessel since the union was interested in protecting the job opportunities of its own members and was not concerned with the interests of the foreign crews on the vessel . . ."

The Court: When was this case?

Mr. Gopman: Here is a case where—By the way,

The Court: Go ahead with the next one.

Mr. Gopman: Here is a case where—By the way, your Honor, that was—I gave you that.

Now we have the 1963 case. It is Marlindo Compania Naviera S/A versus Seafarer's International Union of North American, Washington Superior Court case—we do not have a better citation than 47 Labor Cases, [92] Paragraph 18,252. That is the CCH case.

Mr. Muller: What is the year?

Mr. Gopman: 1963.

The Court: Who is the plaintiff in that case?

Mr. Gopman: The ship's company was the plaintiff.

The Court: American or foreign flag?

Mr. Gopman: Foreign flag.

The Court: What does it say?

Mr. Gopman: It says:

"Court of a state, in which a foreign flag ship manned by a foreign crew, was docked, had no jurisdiction over a suit by the foreign owner of the ship to the extent that the action sought injunctive relief against picketing of the ship by an American union which resulted in a refusal of another union to unload the docked vessel, since the conduct complained of was within the exclusive jurisdiction of the National Labor Relations Board.

"The union activity falling within the provisions of the National Labor Relations Act and the ship owner qualifying as a person under the definitions [93] of terms in that Act, the State court was preempted of jurisdiction."

Again, we have a case from Louisiana. South Georgia Company, Ltd. versus Marine Engineers Beneficial Association. This case—again, we have no better citation than the labor case citation—44 Labor Cases, Paragraph 17,481.

"The picketing of a foreign vessel to protest the loss of jobs by United States seamen with the utilization of that particular ship to transport grain purchased by a foreign government under the Agricultural Trade Development and Assistance Act is a labor dispute within the meaning of the National

Labor Relations Act. Therefore, the jurisdiction of a State court to enjoin the picketing is pre-empted by the National Labor Relations Board when it is not shown that upon application the National Labor Relations Board has declined jurisdiction."

They can do the same thing in this case, walk across the street and file there; and immediately get a decision from the Board as to whether or not they would take or decline jurisdiction. The Board will say: "We will" or "We will not take jurisdiction." And then [94] later on they will say, "We will" or "We will not enjoin this," but the first thing is whether they will take jurisdiction in this case.

* * * * *

[96] * * *

Mr. Muller: There is no question whatsoever that the National Labor Relations Board does not have jurisdiction under these foreign flag cases.

To give the Court a little background—prior to 1963, there were attempts by the NMU Seafarers to organize these cruise ships up and down the East Coast.

A number of petitions for election were filed. During that time—some were won and some were not won. At that time, one of the foreign flag group of ships enjoined the Regional Director of the National Labor Relations Board in Washington and another in Florida—enjoined the employer in Washington, D. C. from proceeding with an election.

The United States Supreme Court took their cases and issued its decision in February, 1963, holding

clearly there is no jurisdiction in National Labor Relations Board in these foreign flag ships—or over the foreign flag ships.

Now, I couldn't catch all the names [97] that counsel read, but several of the cases, I know, have turned on the issue the employer goes into Federal court and is hit with the Norris-LaGuardia Act.

The court says, "We cannot give you an injunction on this," and they cite Norris-LaGuardia. And, I think, in one of the cases, counsel cited that.

But as far as this complaint going before the National Labor Relations Board, it is not so. I have a case here: Sociedad Nacional de Marineros versus McCulloch, 372 (U.S.) 10.

They decided in February, 1963, that it very clearly sets out there is no jurisdiction of the National Labor Relations Board—

The Court: Do any of these local Circuit Courts have jurisdiction over any of these cases?

Mr. Muller: This Court has jurisdiction.

Is that what you are asking about, Judge?

The Court: What one are you talking about? Are there any other cases presently pending in the Circuit Court on these matters?

Mr. Muller: Not that we know of.

The Court: Wasn't there another suit filed?

[98] Mr. Muller: Yes; but that was not against a foreign flag corporation. That was Eastern Steamship Lines. They are in Florida and they were enjoined against picketing against Eastern.

Mr. Gopman: Solely because that company did not operate the vessel.

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Mr. Muller: Judge, there is not the slightest question the National Labor Relations Board does not have jurisdiction in this case.

The Court: That is the problem I have. It is my understanding that the National Labor Relations Board does not and has not in several years taken jurisdiction in any case of a foreign flag vessel; and it is its policy it doesn't because of a Supreme Court decision and as a result of the United States' policy and the President and everybody else.

Mr. Muller: That is the rationale of this case.

Mr. Gopman: But that is limited to the activities that go on in the vessel outside of the American waters. For the elections by the employees of that vessel or the ship's sailors, it has nothing to do with the employees while they are on American [99] shores and only engaged in activities on American shores.

There are cases where they have taken jurisdiction—they can take jurisdiction.

The Court: Can you show me one since 1963?

Mr. Gopman: For a secondary boycott, sir.

The Court: Anything since 1963?

Mr. Gopman: Where the State courts have said they do not have jurisdiction—

Mr. Leslie: Do you want the 1963 case, your Honor? Here it is (handing).

The Court: Yes.

Mr. Gopman: The only one we have here is the case we cited of Marlindo Compania Naviera S/A versus Seafarer's International, which is a Washington Superior Court case. That was a 1963 case.

[100] Mr. Leslie: Headnote 1, your Honor. That points out the Labor Board does not have jurisdiction over foreign ships. It does not say only in elections.

[101] The Court: I understand.

Mr. Leslie: Your Honor, while we are looking, may we also add this?

This is so similar to the colored cases. For the simple reason you call yourself a labor union, this does not get you any closer. This is the same as they desired—they wanted to get their people in there instead of some of our people. It is the same way they argue. They wanted colored people instead of the employees already there.

Mr. Gopman: Your Honor, counsel is claiming we are picketing for the purpose of having our employees doing certain work. I do not know where he gets that idea. We haven't alleged it.

The Court: Why are you picketing?

Mr. Gopman: We are picketing to require the boat owner to pay to employees doing the work of loading and unloading the boat in the docks here—not outside the three-mile limit—wages we have gained for our employees. Nothing else. That is all. That is what we seek.

The Court: That is a different matter entirely.

You say you picketed them to educate the [102] public to the dangers, as to the rights of American citizens.

Mr. Gopman: That is one thing.

The Court: And that is the thing. We do not have a labor dispute. We get into that, because we have no labor dispute.

Then the labor union and the people picketing must be treated the same as other people under the same Constitutional Rights as other people.

Mr. Gopman: Correct.

The Court: Then we come under the tort of the State and we decide whether this is a malicious act, to harm the people.

Mr. Gopman: I do not agree with your Honor.

The Court: I say, if we do—

Mr. Gopman: That is right. The fact we did not mention they were picketing with another sign, that does not mean there was not another sign.

I would like to get it into the record in the event of an appeal. There was a labor dispute going on at that time. A labor dispute with respect to the loading and unloading of these vessels that we [103] were involved with; and I think the case they have cited—the McCulloch case—deals only with the activities of the seamen outside the boundaries of the United States.

* * * * *

[105] The Court: The United States Supreme Court, I think, many times has defined picketing and free speech.

Mr. Gopman: Correct; and at any time they have done that, they have done so on a stated State policy, a statute or some law in some respect.

We do not have that here. In the Webb City case, they stated the policy. In this particular case there is no policy.

The Court: The Webb City case is a State of Florida case.

Mr. Gopman: Yes; but they stated the picketing cannot be carried on for a social purpose. They stated the reason for picketing is to have people—these employers hire these people. That was the illegal purpose.

The fact they were doing damage to the business was not the factor involved. That was incidental to it, but that was not the factor involved. [106] The factor involved was the illegal purpose for which they are carrying on the picketing.

The Court: The purpose was to hurt the business of these people.

Mr. Gopman: That was partially that. The purpose was to hurt the business, to get them acquiesce. What the NAACP's purpose was—the NAACP's purpose was to get them to hire Negroes.

The Court: What is your purpose here?

Mr. Gopman: To get them to stop the ships—

The Court: To hurt the business of these foreign flag companies until it hurts so bad that they are going to, for the purposes of loading and unloading, use your help? And if they sign a contract with you to use your help, then your problem is over, isn't it?

Mr. Gopman: No. We haven't been picketing for that at all.

We are picketing for two purposes: So that American people riding on their ships would not do it any more, they will ride on American ships, where American seamen operate them. We do not want the people to ride on those ships because of the lack of safety [107] conditions. If they brought their safety conditions to where everything was proper, we

wouldn't care if they did; but the fact that safety conditions go hand in hand with that—they are two separate things.

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Mr. Leslie: • • •

I think it is clear what the purpose is, and I think in a roundabout way, he showed what the purpose is.

He contended that he wanted to hurt the owner. And the owner can be hurt. And they are going to be hurt; but we cannot come in and calculate [108] how many thousands of dollars this has cost us.

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The Court: Why is it illegal? What is illegal about their actions as to be enjoined?

Mr. Leslie: It is the same as in the two Florida cases: B & B and the other case.

Mr. Muller: We have a lawful right to conduct our business in a lawful manner. We, under the [109] laws, may not have that lawful right interfered with. That is the basis of the two Supreme Court cases—both the Hughes Case and the Giboney Case. That was cited in the memorandum. The cases stand for the proposition that we have a right to conduct a lawful business. It is unlawful to interfere with that right by this picketing.

Now, in both of those cases—both the Giboney Case and the Hughes Case—the United States Supreme Court states— Also, in the Webb City and B & B Cash Store cases, state:

"The ultimate result may have been laudible and desirable. The means used, however, were illegal."

Forcing customers, inducing customers to cease doing business with the plaintiffs, that is illegal—was

illegal. And that is what we are asking this Court to enjoin.

Mr. Leslie: And I think both Webb City and B & B directly are in point of that part. It is a sociological ultimate objective, but as the United States Supreme Court pointed out: "The immediate objective is to force customers to cease doing business [110] with us and interfering with our lawful business."

Mr. Gopman: Your Honor, let me say one thing.

He quoted two cases that went to the United Supreme Court—the Hughes Case and the Giboney Case. Both of these cases were based on a State statute; that is, just like our State statute with respect to labor relations—the Right to Work Law Both of those cases were based on a similar statute, and the court said that the State had an announced policy; and that is when such a State has an announced policy—the right to picket and right of free speech given in the First Amendment, must step aside of that stated State policy.

We do not have a State policy here that you cannot picket against inferior and substandard conditions.

Mr. Muller: That is not correct, because in the Supreme Court case—the Hughes Case—the Supreme Court specifically pointed out: "The fact that a State's policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial."

We have pointed out there is no law to [111] do this, and we have this in the Webb City case.

Mr. Gopman: We agree it can be stated either way; but it is a definite occurring State policy.

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[112] • • •

CLEVELAND TURNER, was called as a witness by the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gopman:

Q. Please state your full name. A. Cleveland Turner.

[113] Q. What is your occupation? A. President of the National Longshoremen's Association, Local 1416, AFL-CIO, Miami, Florida.

The Court: Did you succeed Judge Henderson?
The Witness: Yes.

By Mr. Gopman:

Q. Mr. Turner, were you in charge of the picketing going on, which we have been discussing here? A. Yes.

Q. What type of picketing sign did you display in Miami? A. On the ship, we displayed a substandard wage sign on the ship loading cargo. In front of the International Terminal, we put the unsafe sign.

The Court: When did you put up those signs? At what time?

By Mr. Gopman:

Q. At what time did you cause the picket to carry the substandard wage sign? A. Whenever a ship docks. The ship docks and we put our sign up—the substandard wage sign.

Q. Specifically, what type of work were you interested in protesting the payment of substandard wages? [114] A. Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage.

Q. Were these performed by employees of the ship, to your knowledge? A. Part of it by employees of the ship and some of it by outside labor.

Mr. Gopman: I have no further questions.

Cross Examination by Mr. Leslie:

Q. The only question I have is what day was this we are talking about? Was this the past Monday? A. The past Monday they didn't load ship stowage.

Q. I mean, your sign. A. Last Monday, substandard wage sign.

Q. On this dock? A. No. Substandard wage sign on this dock—last Monday.

Q. Nothing on the Ariadne dock? A. The Adriadne—Friday a week ago, we had substandard wages.

Q. That is the one you have been enjoined—I mean, did you have a sign saying the Ariadne paid [115] substandard wages? A. Monday, I didn't; but I had on the ship Monday in Miami.

Q. On the ship? You mean— A. In front of the ship, on the dock.

Q. Is your union a trusteeship, by the way, sir? A. It is not.

Q. When was it—

Mr. Gopman: I object. It is not a trusteeship and—

Mr. Leslie: No further questions.

Mr. Gopman: Your Honor, I would like a stipulation from them that they are engaged in interstate commerce in sufficient amounts for the Board to take jurisdiction of each corporation.

Mr. Muller: I do not believe it is interstate.

Mr. Gopman: Foreign commerce in sufficient amounts over $50,000 worth of purchases.

The Court: In the local market?

Mr. Muller: We are engaged in foreign commerce and our receipts from such foreign commerce [116] is in excess of $50,000 annually.

Mr. Gopman: Okay.

Mr. Muller: The plaintiffs, that is.

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[118] * * *

The Court:

The motion to dismiss and quash on general grounds and Constitutional grounds and lack of jurisdiction and the supplemental motion to dismiss and quash on the basis of noncompliance with Florida Statute 613.01 and 613.02, are denied.

The Court finds there is no labor dispute involved here, and this Court has jurisdiction; that the acts of the union are in violation of Florida law; and that the picketing, the enjoining of the picketing would not be an enjoining of free speech as guaranteed by the Constitution of the United States; and, therefore, the union will be enjoined as prayed for in the Complaint; and the plaintiffs will be required to post a bond in the amount of $5,000.

Mr. Muller: Would the Court find the [119] National Labor Relations Board has no jurisdiction in this matter?

The Court: The Court so found by saying there is no labor dispute involved; and it involves all the matters that are involved in this Court.

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Order

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY

No. 66C-5523 (Lee)

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation
and EVANGELINE STEAMSHIP CO., S.A.
a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1416 AFL-CIO,

Defendant.

ORDER

THIS CAUSE HAVING come on for hearing on the Plaintiff's Motion for Final Summary Judgment permanently enjoining the Defendant, the Court having heard argument of the respective parties, having examined the file and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion be and hereby is granted, the injunction being made permanent as more fully set forth in this Court's Order of May 26, 1966.

DONE AND ORDERED in Chambers, in Miami, Dade County, Florida, this 1 day of May, 1967.

THOMAS E. LEE, JR.
JUDGE, CIRCUIT COURT

Order

(Reported at 195 So.2d 238)

No. 66-982

District Court of Appeal of Florida

Third District

Feb. 21, 1967

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

v.

ARIADNE SHIPPING COMPANY, Limited, a Liberian corporation, and Evangeline Steamship Co., S. A., a Panamanian corporation,

Appellees.

An Interlocutory Appeal from Circuit Court for Dade County; Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Goplan, Epstein & Miles, Miami Beach, for appellant.

Shutts & Bowen and Cotton, Howell, Miller, Schenerlein & Bare, Miami, for appellees.

PER CURIAM.

Affirmed. See: Overstreet v. Frederick B. Cooper Co., Inc., Fla. 1961, 134 So.2d 225; McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d 547; Incres Steamship Company, Ltd. v. International Maritime Workers Union, 372 U.S. 24, 83 S.Ct. 611, 9 L.Ed.2d 557.

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Opinion of District Court of Appeal

(Reported at 215 So.2d 51)

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT—JULY TERM, A.D. 1968

CASE NO. 67-853

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

VS.

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation,

Appellee.

Opinion filed October 29, 1968.

An Appeal from the Circuit Court for Dade County, Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Gopman, Epstein & Miles, for appellant.

Shutts & Bowen and Cotton Howell; Muller, Schenerlein & Bare, for appellee.

Before

CHARLES CARROLL, C.J. and PEARSON and HENDRY, JJ.

HENDRY, *Judge.*

Opinion of District Court of Appeal

This appeal was taken by the defendant below from a permanent injunction entered by the Circuit Court of Dade County.[1] The Appellant is a labor organization composed of persons who perform the labor of loading and unloading ships in Miami, Florida; the appellees are both engaged in the business of owning and operating cruise ships which transport persons from Port Everglades, and Miami to various points of interest in the Carribean and West Indies area. The ships are of foreign registry, owned by Liberian and Panamanian corporations. It must also be noted that none of the members in the appellant labor union are employed to perform any work in connection with the operation of the cruise ships involved herein; moreover, the

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[1] "FURTHER ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this case.

"FURTHER ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida law; that Plaintiffs are suffering and will continue to suffer irreparable injury unless enjoined; it is therefore

"ORDERED that pending final Hearing in this matter Defendant its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

"1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

"2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiff's vessels are unsafe;

"3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

"4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs."

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union itself does not represent any of the employees who work on the ships.

In May of 1966, the appellant established a picket line on the public docks of Miami, adjacent to the berths where the ships operated by the appellees were being loaded and unloaded. Some of the appellant's members carried picket signs and placards; others distributed handbills to passengers who were embarking or disembarking from the ships.[3]

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[3] (Partial text of handbill:)

"WARNING!"

"IS YOU CRUISE SHIP A FLOATING DEATH TRAP?"

"CAN A SUB-STANDARD FOREIGN FLAG CRUISE SHIP TURN YOUR HOLIDAY INTO A HOLOCAUST?"

"You, I am sure, are aware of the old adage, that experience is the best teacher. Yet, thousands of unsuspecting Americans continue to place their lives in jeopardy every day on cruises aboard foreign flag floating fire-traps. The sinking of the Yarmouth Castle was an 'experience' of which all Americans should take heed, as to the unsafe conditions existing today in foreign cruise ships. The Yarmouth Castle flew under a Panamanian flag and when it sank, 90 lives were lost.

"What can passengers of these so-called 'luxurious' cruise ships like the 'Yarmouth Castle' do to protect themselves? The answer is—know your ship. All ships sailing out of U. S. Ports are inspected by the U. S. Coast Guard. The U. S. Coast Guard can enforce U. S. Safety standards only on U. S. ships. Ships under foreign flags are subject to far less stringent regulations than are those under U.S. flags. There is a vast difference in the safety regulations which apply to ships of different countries—and the difference can be a matter of life or death. The strictest safety regulations of all are those of the United States. Yet, despite the fact that a majority of all the cruise ships that leave the ports of Miami and other United States ports, are American owned, they carry a foreign flag. Why is this? The answer is simple, in that in operating under a 'flag of convenience' offered by small foreign countries such as Liberia and Panama, whose safety standards are minimal, cruise lines then can ignore construction stan-

Thereafter, appellees instigated this action to enjoin the labor union from picketing and distributing the handbills in question. At the trial court hearing, testimony was taken which tended to show the following: (1) that the union was concerned with safety conditions aboard the two foreign vessels; and (2) that the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages. The trial court first determined that it had jurisdiction in the matter, and further, that such jurisdiction was not pre-empted by the National Labor Relations Board since no labor dispute existed. The court next decreed its order which temporarily restrained the appellants from their activities, setting forth the court's findings and the provisions of the injunction, supra, note 1. An interlocutory appeal was taken by the appellants which tested the question of whether or not the circuit court did, in fact, have jurisdiction over the dispute. We answered, in International Longshoreman's Association, Local 1416, AFL-CIO v. Ariadne Shipping Company, Ltd., Fla.App.1967, 195 So.3d 238, that

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dards, the equipment, the age limits, the regular inspection, overhaul requirements and other safety regulations which U. S. law sets for all our ships."

* * *

(Text of placards:)

"ARIADNE
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

"BAHAMA STAR
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

* * *

it did have jurisdiction and could properly entertain the action. Thereafter, based on our affirmation of the jurisdictional issue, the circuit court changed the nature of its order to that of a permanent injunction.

The permanent injunction was specifically designed to counter the harmful effects of the appellant's false accusations regarding the unsafeness of the ships. Furthermore, the injunction also embodied the court's finding that no real dispute over wages really existed, and therefore, publicizing accusations as to that grievance was also forbidden. Thus, we affirm the order's first three provisions.

However, in framing a proper remedy for these actions, the trial court caused one section of the order to be too broad, i.e., Provision Four. We therefore find merit in appellant's contention that the precise wording of this particular provision does in fact put the union in jeopardy as to its rights and obligations for any future activity. A succinct statement which summarizes the Florida holding in cases of injunctions which are too broad appears in Florida Peach Orchards, Inc. v. State, Fla. App. 1966, 190 So.2d 796:

> "An injunctive order should never be broader than is necessary to secure to the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case. Moore v. City Dry Cleaners and Laundry, Fla. 1949, 41 So.2d 865; and Seaboard Rendering Co. v. Conlon, 1942, 152 Fla. 723, 12 So.2d 882. An injunctive order should be adequately particularized, especially where some activities may be permissible and proper. Moore v. City Dry Cleaners & Laundry, supra. Such an order should be confined within reasonable limitations and phrased in such language

that it can with definiteness be complied with, and one against whom the order is directed should not be left in doubt as to what he is required to do. Pizio v. Babcock, Fla. 1954, 76 So.2d 654." Id. at 798.

A final point raised by the appellant questions the correctness of the court's order which granted appellee's motion to dissolve the surety bond and discharge the surety for the injunction order. We dealt more fully with that question in International Longshoremen's Ass'n., Local 1416, AFL-CIO v. Eastern Steamship Lines, Inc., Fla.App. 1968, 206 So.2d 473, but reiterate here that such order was in error since it purported to preempt all of the appellant's rights against the surety bond before an ultimate determination of the injunction's correctness had been made.

As to the rest of the permanent restraining order, we find no error. Therefore, the order appealed from is affirmed in part and reversed in part.

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Order of Supreme Court of Florida Denying Petition for Writ of Certiorari

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1969—WEDNESDAY, MARCH 19, 1969

CASE NO. 38,098

DISTRICT COURT OF APPEAL—THIRD DISTRICT

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, ETC., *et al.*,

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, DREW, THORNAL, CARLTON and BOYD, JJ., concur.

ERVIN, C.J., and ADKINS, J., dissent.

A True Copy

Order of Supreme Court of Florida Denying Petition for Writ of Certiorari

TEST:

/s/ SID J. WHITE
Sid J. White
Clerk Supreme Court

cc: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Kastenbaum, Mamber, Gopman, Epstein & Miles
Messrs. Shutts & Bowen

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Supreme Court of the United States

No. 231 ....., *October Term, 19* 69

International Longshoremen's Association, Local 1416, AFL-CIO,

Petitioner,

v.

Ariadne Shipping Company, Limited, et al.

Order allowing certiorari. *Filed* October 13 ....., *19* 69.

The petition herein for a writ of certiorari to the ~~Supreme Court~~ **District Court of Appeal** *of the State of* **Florida,** **District, Third** *is granted,* **and the case is placed on the summary calendar.**

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

v.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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501 Fifth Avenue
New York, New York 10017

Attorneys for Petitioner

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Other Authorities

IN THE

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No.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

International Longshoremen's Association, Local 1416, AFL-CIO (hereinafter sometimes referred to a "Local 1416" or "the Union") petitions for a writ of certiorari to review the judgment of the District Court of Appeal, Third District, State of Florida, in this case.[1]

Opinions Below

The order of the Supreme Court of Florida, denying certiorari to review the decision of the Florida District

[1] The Supreme Court of Florida having denied certiorari, the order which petitioner seeks to have reviewed herein is that of the District Court of Appeal, the highest state court passing upon the merits. *ILGWU Local 415* v. *Scherer & Sons, Inc.*, 389 U.S. 577 and 390 U.S. 717.

Court of Appeal, Third District, was rendered without opinion; and its order is set forth at Appendix pp. 14a-15a. The opinion of the District Court of Appeal, Third District, on the appeal from the judgment of permanent injunction issued by the Circuit Court of Dade County, which also constitutes the order of the Court of Appeal sought to be reviewed herein (*Retail Clerks Local 1625* v. *Schermerhorn*, 373 U.S. 746), is reported in 215 So. 2d 51 and set forth at Appendix pp. 7a-12a. The opinion of the District Court of Appeal, Third District, on appeal from a temporary restraining order issued by the Circuit Court of Dade County is reported in 195 So. 2d 238 and is set forth at Appendix p. 13a. The Circuit Court of Dade County did not render any opinion, either on issuance of the temporary restraining order or grant of the permanent injunction; its orders are set forth at Appendix pp. 16a, 17a-19a.

Jurisdiction

The order of the Supreme Court of Florida denying certiorari was entered on March 19, 1969. The order of the District Court of Appeal was entered on October 29, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

Questions Presented

1. Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port.

2. Whether the issuance of an injunction against peaceful picketing, protesting substandard wages, violates peti-

tioner's rights under the First and Fourteenth Amendments to the United States Constitution.

Constitutional and Statutory Provisions Involved

The applicable Constitutional provisions are:

> Article VI, 2nd Paragraph (Supremacy Clause); First and Fourteenth Amendments;

The applicable statutory provisions are:

> National Labor Relations Act, §§ 7, 8(b)(4), 8(b)(7). and 9(a) and (b); 29 U.S.C. §§ 157, 158(b) (4), 158(b) (7), and 159(a) and (b).

The text of these provisions is set forth at Appendix pp. 1a-6a.

Statement

Respondents operate at least two vessels under foreign registry on Caribbean cruises originating in Miami and Fort Lauderdale, Florida. Local 1416, an affiliate of the International Longshoremen's Association, AFL-CIO, represents longshoremen in the Miami-Fort Lauderdale area.

The ordinary longshore work of loading and stowing ship's cargo and loading automobiles aboard respondents' vessels was performed, in these Florida ports, not by union longshoremen but partly by ship's employees and partly by outside personnel hired for the occasion. Their wages were below the area standards established in local ILA agreements. Accordingly, on days when these longshore operations took place, Local 1416 posted a picket on the dock in front of the ship protesting the payment of sub-standard wages to the non-union personnel performing

longshore functions. On days when no loading occurred, no picketing took place (Appendix 41a-42a).

On at least one occasion the Union also displayed a sign calling attention to unsafe shipboard conditions, dangerous to passengers and employees.[2]

Upon service of the complaint and request for a temporary restraining order, the Union filed a motion to dismiss for lack of jurisdiction, asserting that the issues raised by respondent fell within the exclusive jurisdiction of the National Labor Relations Board (Appendix pp. 20a-22a). A companion motion to dismiss was filed on the ground that the activities complained of were protected by the First and Fourteenth Amendments (Appendix pp. 23a-24a).

At the hearing on the application for temporary injunctive relief, the Union reiterated its contention that the preemption doctrine applied to picketing directed at the payment of substandard wages for longshore work and that the picketing was also protected by the First and Fourteenth Amendment. The trial court accepted the company's argument that the decisions in *McCulloch* v. *Soci-*

[2] Although the trial judge enjoined these "safety" signs, he specifically declined to find them false and, indeed, assumed their truth as a matter within his judicial notice (Appendix p. 35a). No factual evidence on this issue was ever presented by either side. The trial judge apparently viewed the charges of unsafe shipboard conditions, though true, as beyond the legitimate interests of a labor union and therefore unjustified, enjoinable interference with respondents' business. Between the issuance of the temporary restraining order and the permanent injunction, the federal authorities imposed stricter safety requirements on foreign flag passenger vessels using American ports, and the Union thereupon abandoned its appeal from this branch of the injunction. Notwithstanding such express abandonment, the District Court of Appeal inexplicably held this decretal provision to be justified in order "to counter . . . appellant's false accusations regarding the unsafeness of the ships." In any event, petitioner regards this issue as abandoned, and no review of those provisions of the injunction is sought herein.

edad Nacional de Marineros de Honduras, 372 U.S. 10 and *Incres Steamship Co., Ltd.* v. *IMWU*, 312 U.S. 24, deprived the NLRB of jurisdiction over longshore operations performed on foreign flag vessels in American ports, and not merely disputes involving the labor relations of the ship's crew (Appendix pp. 35a-41a; 43a-44a).

The trial court specifically concluded "that the National Labor Relations Board has no jurisdiction in this cause, that there is no labor dispute; and that this Court has jurisdiction in this issue." Its order enjoined:

> "3—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;" (Appendix p. 18a).

The Union took an interlocutory appeal to the District Court of Appeal on the issue of jurisdiction, again urging the preemptive force of the federal labor laws. The temporary restraining order was affirmed per curiam on the authority of *Sociedad Nacional* and *Incres* (Appendix p. 13a).[3]

The Union then filed its answer in the trial court, alleging, among other defenses, the exclusive jurisdiction of the NLRB over the substandard wage picketing and the free speech guarantees of the Federal Constitution (Appendix pp. 28a-34a). Without adducing further proof, the company moved for summary judgment making the temporary injunction permanent; and this motion was granted by the trial court.

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[3] The single state court case cited by the District Court dealt with the Union's alternative contention that the companies had failed to qualify under Florida law and thus lacked standing to sue in the Florida courts.

On appeal the Union continued to urge both the free speech contention and the state court's lack of jurisdiction over peaceful picketing to protest substandard longshore wages. The District Court of Appeals acknowledged that the testimony at the hearing on the temporary restraining order—the only hearing had in the case—"tended to show . . . that the Union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages". Holding that state jurisdiction was not preempted, the Court concluded that the injunction properly "embodied the court's finding that no real dispute over wages existed, and therefore, publicizing accusations as to that grievance was also forbidden." [4]

The Union then petitioned the Supreme Court of Florida for a writ of certiorari to review the decision of the District Court of Appeal, again urging the applicability of the preemption doctrine and free speech guarantee. Under Florida law, the State Supreme Court has jurisdiction over this type of case only to resolve conflict between two

[4] Neither the opinion of the District Court of Appeal nor any order of the trial court explains what the District Court meant in saying that no "real" dispute over wages existed. The trial court concluded that there was no "labor dispute" and enjoined picket signs indicating that a "labor dispute exists between Defendant and Plaintiff by any reference to substandard wages." But there was neither evidence nor finding of a lack of "real" dispute, in the sense that the professed objective or message of the picket sign masked some other non-labor objective unrelated to wage scales. The trial court's statement as to the lack of a "labor dispute" would appear to be merely a conclusory capsulizing of one of the following legal theories: (1) a "labor dispute" is a dispute within the jurisdiction of the NLRB, and since this dispute is not within NLRB jurisdiction, it is not a "labor dispute"; or (2) inasmuch as Local 1416 did not represent any of the longshore employees of respondents, no "labor dispute" existed between the parties. For reasons summarized below, petitioner urges that the legal assumptions underlying both theories are clearly erroneous and contrary to the decisions of this Court.

District Courts of Appeal or between the decision sought to be reviewed and decisions of the State Supreme Court. Constitution of the State of Florida, Article V, Section 4(2); Florida Appellate Rules 4.5 c(6). Over the dissent of two Judges, the Supreme Court of Florida denied the petition for certiorari, "it appearing to the Court that it is without jurisdiction".

Reasons For Granting the Writ

1. The decision of the Florida courts granting a permanent injunction against peaceful picketing to publicize substandard wage payments directly conflicts with decisions of this Court. The issues fall squarely within the jurisdiction of the National Labor Relations Board, and state injunctive jurisdiction is clearly preempted. *Garner* v. *Teamsters Local 776*, 346 U.S. 485; *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236; *Liner* v. *Jafco, Inc.*, 375 U.S. 301; *National Marine Engineers Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173; *Hanna Mining Company* v. *District 2, MEBA*, 382 U.S. 101.

Peaceful picketing directed at wage scales below the area standards established by the picketing union is protected actively under the National Labor Relations Act. And whether or not this is the "real" objective of the Union is an issue entrusted by that Act to the exclusive jurisdiction of the NLRB and regularly decided by that Board under Sections 8(b) (4) and 8(b) (7). *E.g. International Hod Carriers Local 41 (Calumet Construction Co.)*, 130 NLRB 78, *rev'd* 133 NLRB 512; *Retail Clerks Local 344 (Alton Myers)*, 136 NLRB 1270; *Local 953 IBEW (Erickson Electric Co.)*, 154 NLRB 130; *Retail Clerks Local 889 (Ted R. Frame)*, 166 NLRB No. 92; Note, "Illegal Picketing Under Section 8(b) 7-A Reexamination", 68 Columbia L. Rev. 745. A state court is without power to enjoin such

picketing on the ground that no labor dispute exists between the parties. *Liner* v. *Jafco, supra; Local 438, Construction Workers* v. *Curry,* 371 U.S. 542.

2. The decisions in *McCulloch* v. *Sociedad Nacional de Marineros de Honduras,* 372 U.S. 10 and *Incres Steamship Company Ltd.* v. *International Maritime Workers Union,* 372 U.S. 24 have no application and were erroneously regarded as controlling by the Florida courts. These cases dealt with attempts to organize the alien crewmen of foreign flag vessels, and this Court concluded that relations between such ships and their seamen employees—characterized as "maritime operations"—are outside the jurisdiction of the National Labor Relations Board. None of the considerations referred to in these decisions apply to traditional longshore operations, the loading, unloading and stowage of cargo, performed on foreign flag vessels in American ports. *Cf. Benz* v. *Compania Naviera Hidalgo,* 353 U.S. 138.

3. The National Labor Relations Board has frequently and continuously taken jurisdiction over the American longshore operations of foreign flag vessels, both as to representation elections and unfair labor practice charges. Labor relations in the longshore industry have never depended upon the registry of the vessel. The same collective bargaining agreement covers all American longshore operations on both foreign and domestic ships; and, indeed, the bulk of longshore work in this county involves foreign flag vessels. When establishing a port-wide appropriate bargaining unit, the NLRB has set a single unit for the longshore employees of all shipping companies, both foreign and domestic.[5] Moreover, the NLRB has al-

[5] The presently effective NLRB certification for longshoremen in the Port of New York is set forth in *New York Shipping Associa-*

ways taken jurisdiction over unfair labor practice charges involving longshore operations on foreign flag vessels.[6]

4. The issue involved in this case is of substantial general importance to the entire longshore industry. If, as the Florida courts have held herein, NLRB jurisdiction does not extend to longshore operations of foreign flag vessels, then serious consequences follow, not only to the tens of thousands of workers who would thereby be deprived of the protection of the Federal Act, but to the entire national economy as well. It is not necessary to belabor the crucial, sensitive importance of this industry to the national welfare; the fact that it has been the sub-

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tion, Inc., 116 NLRB 1183. Among the employers included in the single Port-wide bargaining unit are such well-known foreign flag lines as Argentine State Line, Belgian Line, Inc., Chilean Line, The Cunard Steamship Company, Ltd., French Line, Hellenic Lines, Ltd., Holland-American Line, Italian Line, and Royal Netherlands Steamship Company. Other representation proceedings involving pierside operations of foreign flag lines are *Compagnie Generale Transatlantique (French Line)*, 117 NLRB 535 and *Italia Societa per Azione di Navigazione (Italian Line)*, 118 NLRB 1113.

Although many shipping companies have their American longshore operations performed by stevedoring contractors, some companies, including foreign flag lines, employ longshoremen, checkers, tally clerks, and similar workers directly, and they have always heretofore been considered subject to NLRB jurisdiction. The record herein does not show whether or not respondent operated through a local stevedore, but this, we urge, is immaterial, since NLRB jurisdiction applies in either event.

[6] *E.g. Local 1355, ILA (Maryland Ship Ceiling Co.)*, 146 NLRB 723; *Cunard Steamship Co., Ltd.*, Cases 4-CA-1787, 1788, 4-CB-482, 4-CA-2229-1-2-3, 1961 CCH NLRB Decisions ¶10,813; *Madden* v. *Grain Elevator Workers Local 418*, 334 F.2d 1014, *cert. denied*, 379 U.S. 967; *Grain Elevator Workers Local 418* v. *NLRB*, 376 F.2d 774, *cert. denied*, 389 U.S. 932.

Foreign flag shipping lines are, of course, also compelled to abide by other federal social welfare legislation, such as Social Security and Longshoremen's Compensation, affecting their longshore employees in United States ports.

ject of more "national emergency" injunctions under the Taft-Hartley Act than any other industry is sufficient demonstration of that.

The holding of the Florida courts would, in effect, bifurcate labor relations in this complex, sensitive industry. A portion of an industry which has traditionally been treated as an entity would be governed by the federal labor law with its single, authoritative, expert tribunal. Another portion—the major portion at that—would be subject to the laws of the various states and their respective tribunals.

The effects of this would work both ways. To take but a single recent example, the recent national longshore strike was ended through temporary injunctions obtained by the NLRB against alleged union unfair labor practices in certain leading ports. If the NLRB lacked jurisdiction over foreign flag longshore operations, the consequences might have been entirely different.

In other instances, the union, as charging party, would be deprived of the benefits of NLRB unfair labor practice jurisdiction or would be unable to avail itself of the Board's representation procedures. And in lawsuits instituted in state courts, such as the case at bar, longshoremen and their union would be deprived of the protection of federal law and the uniform application of that law by the prescribed federal agency.

5. In addition, this injunction against peaceful picketing violates petitioner's rights under the First and Fourteenth Amendments. There was neither evidence nor finding of violence or other physical impediment to the free passage of either persons or materials. Nor was the picketing directed toward an illegal end or some other objective which

might validly be immunized
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can Federation of Musician from union activ-
Mine Workers v. *Pennington* inate sub-standard
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769; *AFL* v. *Swing*, 312 U. s work. *Amalga-*

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CONCLUSION

For the foregoing reasons, it is urged that the petition for a writ of certiorari should be granted.

Respectfully submitted,

LOUIS WALDMAN
SEYMOUR M. WALDMAN
Attorneys for Petitioner

APPENDIX

APPENDIX

Constitutional and Statutory Provisions Involved

United States Constitution, Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

National Labor Relations Act,
Sec. 7. (29 U.S.C. Sec. 157)

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of

collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(b)(4) (29 U.S.C. Section 158, (b)(4))

It shall be an unfair labor practice for a labor organization or its agents . . .

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the rep-

resentative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act:

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with

whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution:

Sec. 8(b)(7) (29 U.S.C. Sec. 158(b)(7))

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section

9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Section 9 (a) and (b) (29 U.S.C. Sec. 159(a) and (b))

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect. . . .

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,*

That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Opinion of District Court of Appeal of Florida, Third District, Filed and Entered October 29, 1968, Reported at 215 So.2d 51

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT—JULY TERM, A.D. 1968

CASE NO. 67-853

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

vs.

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation,

Appellee.

Opinion filed October 29, 1968.

An Appeal from the Circuit Court for Dade County, Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Gopman, Epstein & Miles, for appellant.

Shutts & Bowen and Cotton Howell; Muller, Schenerlein & Bare, for appellee.

Before CHARLES CARROLL, *C.J.* and PEARSON and HENDRY, *JJ.*

HENDRY, *Judge.*

This appeal was taken by the defendant below from a permanent injunction entered by the Circuit Court of Dade County.[1] The Appellant is a labor organization composed of persons who perform the labor of loading and unloading ships in Miami, Florida; the appellees are both engaged in the business of owning and operating cruise ships which transport persons from Port Everglades, and Miami to various points of interest in the Carribean and West Indies area. The ships are of foreign registry, owned by Liberian and Panamanian corporations. It must also be noted that none of the members in the appellant labor union are employed to perform any work in connection with the operation of the cruise ships involved herein; moreover, the

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[1] "FURTHER ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this case.

"FURTHER ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida law; that Plaintiffs are suffering and will continue to suffer irreparable injury unless enjoined; it is therefore

"ORDERED that pending final Hearing in this matter Defendant its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

"1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

"2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiff's vessels are unsafe;

"3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

"4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease dong business with Plaintiffs."

* * *

union itself does not represent any of the employees who work on the ships.

In May of 1966, the appellant established a picket line on the public docks of Miami, adjacent to the berths where the ships operated by the appellees were being loaded and unloaded. Some of the appellant's members carried picket signs and placards; others distributed handbills to passengers who were embarking or disembarking from the ships.[2]

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[2] (Partial text of handbill:)

"WARNING!"

"IS YOU CRUISE SHIP A FLOATING DEATH TRAP?"

"CAN A SUB-STANDARD FOREIGN FLAG CRUISE SHIP TURN YOUR HOLIDAY INTO A HOLOCAUST?"

"You, I am sure, are aware of the old adage, that experience is the best teacher. Yet, thousands of unsuspecting Americans continue to place their lives in jeopardy every day on cruises aboard foreign flag floating fire-traps. The sinking of the Yarmouth Castle was an 'experience' of which all Americans should take heed, as to the unsafe conditions existing today in foreign cruise ships. The Yarmouth Castle flew under a Panamanian flag and when it sank, 90 lives were lost.

"What can passengers of these so-called 'luxurious' cruise ships like the 'Yarmouth Castle' do to protect themselves? The answer is—know your ship. All ships sailing out of U. S. Ports are inspected by the U. S. Coast Guard. The U. S. Coast Guard can enforce U. S. Safety standards only on U. S. ships. Ships under foreign flags are subject to far less stringent regulations than are those under U.S. flags. There is a vast difference in the safety regulations which apply to ships of different countries—and the difference can be a matter of life or death. The strictest safety regulations of all are those of the United States. Yet, despite the fact that a majority of all the cruise ships that leave the ports of Miami and other United States ports, are American owned, they carry a foreign flag. Why is this? The answer is simple, in that in operating under a 'flag of convenience' offered by small foreign countries such as Liberia and Panama, hwose safety standards are minimal, cruise lines then can ignore construction standards, the equipment, the age limits, the regular inspection, over-

Thereafter, appellees instigated this action to enjoin the labor union from picketing and distributing the handbills in question. At the trial court hearing, testimony was taken which tended to show the following: (1) that the union was concerned with safety conditions aboard the two foreign vessels; and (2) that the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages. The trial court first determined that it had jurisdiction in the matter, and further, that such jurisdiction was not pre-empted by the National Labor Relations Board since no labor dispute existed. The court next decreed its order which temporarily restrained the appellants from their activities, setting forth the court's findings and the provisions of the injunction, supra, note 1. An interlocutory appeal was taken by the appellants which tested the question of whether or not the circuit court did, in fact, have jurisdiction over the dispute. We answered, in International Longshoreman's Association, Local 1416, AFL-CIO v. Ariadne Shipping Company, Ltd., Fla.App.1967, 195 So.3d 238, that it did have jurisdiction and could properly entertain the

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haul requirements and other safety regulations which U. S. law sets for all our ships."

* * *

(Text of placards:)

"ARIADNE
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

"BAHAMA STAR
REFUSE
To Maintain Adequate
Safety Conditions
FOR
PASSENGERS &
EMPLOYEES
International Longshoremen's
Association—Local 1416
Miami, Fla."

* * *

action. Thereafter, based on our affirmation of the jurisdictional issue, the circuit court changed the nature of its order to that of a permanent injunction.

The permanent injunction was specifically designed to counter the harmful effects of the appellant's false accusations regarding the unsafeness of the ships. Furthermore, the injunction also embodied the court's finding that no real dispute over wages really existed, and therefore, publicizing accusations as to that grievance was also forbidden. Thus, we affirm the order's first three provisions.

However, in framing a proper remedy for these actions, the trial court caused one section of the order to be too broad, i.e., Provision Four. We therefore find merit in appellant's contention that the precise working of this particular provision does in fact put the union in jeopardy as to its rights and obligations for any future activity. A succinct statement which summarizes the Florida holding in cases of injunctions which are too broad appears in Florida Peach Orchards, Inc. v. State, Fla. App. 1966, 190 So.2d 796:

> "An injunctive order should never be broader than is necessary to secure to the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case. Moore v. City Dry Cleaners and Laundry, Fla. 1949, 41 So.2d 865; and Seaboard Rendering Co. v. Conlon, 1942, 152 Fla. 723, 12 So.2d 882. An injunctive order should be adequately particularized, especially where some activities may be permissible and proper. Moore v. City Dry Cleaners & Laundry, supra. Such an order should be confined within reasonable limitations and phrased in such language that it can with definiteness be complied with, and one against whom the order is directed should not be left in

doubt as to what he is required to do. Pizio v. Babcock, Fla. 1954, 76 So.2d 654." Id. at 798.

A final point raised by the appellant questions the correctness of the court's order which granted appellee's motion to dissolve the surety bond and discharge the surety for the injunction order. We dealt more fully with that question in International Longshoremen's Ass'n., Local 1416, AFL-CIO v. Eastern Steamship Lines, Inc., Fla.App. 1968, 206 So.2d 473, but reiterate here that such order was in error since it purported to preempt all of the appellant's rights against the surety bond before an ultimate determination of the injunction's correctness had been made.

As to the rest of the permanent restraining order, we find no error. Therefore, the order appealed from is affirmed in part and reversed in part.

Opinion of District Court of Appeal of Florida, Third District Filed and Entered February 21, 1967, on Appeal From Temporary Restraining Order, Reported at 195 So.2d 239

No. 66-982

District Court of Appeal of Florida

Third District

Feb. 21, 1967

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Appellant,

v.

ARIADNE SHIPPING COMPANY, Limited, a Liberian corporation, and Evangeline Steamship Co., S. A., a Panamanian corporation,

Appellees.

An Interlocutory Appeal from Circuit Court for Dade County; Thomas E. Lee, Jr., Judge.

Kastenbaum, Mamber, Gopman, Epstein & Miles, Miami Beach, for appellant.

Shutts & Bowen and Cotton, Howell, Miller, Schenerlein & Bare, Miami, for appellees.

PER CURIAM.

Affirmed. See: Overstreet v. Frederick B. Cooper Co., Inc., Fla. 1961, 134 So.2d 225; McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d 547; Incres Steamship Company, Ltd. v. International Maritime Workers Union, 372 U.S. 24, 83 S.Ct. 611, 9 L.Ed.2d 557.

Order of Supreme Court of Florida Denying Certiorari, Filed and Entered March 19, 1969

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1969—WEDNESDAY, MARCH 19, 1969

CASE NO. 38,098

DISTRICT COURT OF APPEAL—THIRD DISTRICT

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, ETC., *et al.,*

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, DREW, THORNAL, CARLTON and BOYD, JJ., concur.

ERVIN, C.J., and ADKINS, J., dissent.

A True Copy

Order of Supreme Court of Florida Denying Certiorari
Filed and Entered March 19, 1969

TEST:

/s/ SID J. WHITE
Sid J. White
Clerk Supreme Court

cc: Hon. W. P. Carter
Hon. E. B. Leatherman
Messrs. Kastenbaum, Mamber, Gopman, Epstein & Miles
Messrs. Shutts & Bowen

Order of Circuit Court, Dade County, Florida, Granting Permanent Injunction, Filed and Entered May 1, 1967

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY

No. 66C-5523 (Lee)

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation and EVANGELINE STEAMSHIP CO., S.A. a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416 AFL-CIO,

Defendant.

ORDER

THIS CAUSE HAVING come on for hearing on the Plaintiff's Motion for Final Summary Judgment permanently enjoining the Defendant, the Court having heard argument of the respective parties, having examined the file and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion be and hereby is granted, the injunction being made permanent as more fully set forth in this Court's Order of May 26, 1966.

DONE AND ORDERED in Chambers, in Miami, Dade County, Florida, this 1 day of May, 1957.

THOMAS E. LEE, JR.
JUDGE, CIRCUIT COURT

Order of Circuit Court, Dade County, Florida, Granting Temporary Restraining Order, Filed and Entered May 26, 1966

In the Circuit Court of the 11th Judicial Circuit

In and For Dade County, Florida

In Chancery

Case No. 66C-5523 (Lee)

Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation,

Plaintiffs,

v.

International Longshoremen's Association, Local 1416, AFL-CIO,

Defendant.

Order

This cause having come on for Hearing on the verified Complaint of the Plaintiffs, Ariadne Shipping Company Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation, and on the several Motions of the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, to Dismiss, the Court having heard testimony, argument of counsel for the respective parties, having examined the file and being fully advised in the premises, it is

Ordered, Adjudged and Decreed that all the Defendant's Motions be and the same are hereby denied.

Order of Circuit Court, Dade County, Florida, Etc.

Further ORDERED, ADJUDGED and DECREED that the National Labor Relations Board has no jurisdiction in this cause; that there is no labor dispute; and that this Court has jurisdiction in this cause.

Further ORDERED, ADJUDGED and DECREED that the Defendant's actions are in violation of Florida Law; that Plaintiffs are suffering, and will continue to suffer irreparable injury unless enjoined; it is therefore

ORDERED that pending final Hearing in this matter Defendant, its officers, agents, allies, confederates and attorneys are enjoined and restrained from:

1.—Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;

2.—Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiffs' vessels are unsafe;

3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;

4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs.

Order of Circuit Court, Dade County, Florida, Etc.

Further Ordered, Adjudged and Decreed that the Plaintiffs post a Bond in the total amount of Five Thousand Dollars, ($5,000.00),

Done and Ordered in Chambers, in Miami, Dade County, Florida, this 26th day of May, 1966.

Thomas E. Lee, Jr.
Judge Circuit Court

Defendant's Special Motion to Dismiss For Lack of Jurisdiction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523

ARIADNE SHIPPING COMPANY LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys and files this their Special Motion to Dismiss and/or Quash the Complaint and says:

1. Defendant moves to dismiss and/or quash the Complaint and cause on the ground that this Court does not have jurisdiction over the subject matter of this suit.

Defendant's Special Motion to Dismiss
For Lack of Jurisdiction

2. That the Plaintiffs have charged the Defendant Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act.

3. That the Plaintiffs are engaged in activities which affect interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction over this matter or in the alternative that the labor disputes involved herein affects interstate commerce and/or foreign commerce in sufficient quantities for the National Labor Relations Board to assume jurisdiction of the matters alleged in the Complaint.

4. That by virtue of the fact that Interstate Commerce and/or Foreign Commerce is involved or affected and that by virtue of the fact that the Plaintiffs have charged in their Complaint that the Union is engaged in an activity which is either prohibited or protected by the National Labor Relations Act, sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activity nor may any State Court invoke its injunctive process to prohibit such activity.

WHEREFORE, Defendant prays that this Court investigate this matter to determine whether interstate commerce or foreign commerce is involved or affected, and thereupon dismiss or quash the complaint.

Defendant's Special Motion to Dismiss
For Lack of Jurisdiction

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Special Motion to Dismiss was mailed this 26 day of May, 1966 to SHUTTS & BOWEN, First National Bank Bldg., Miami, Florida and MULLER, SCHENERLEIN & BARE, 100 Biscayne Boulevard North, Miami, Florida, Attorneys for Plaintiffs.

Allan M. Elster

Defendant's Motion to Dismiss and/or Quash

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through its undersigned attorneys and without waiving its Special Motion to Dismiss and/or Quash for Lack of Jurisdiction heretofore filed in this cause, files this, its Motion to Dismiss and says:

1. Defendant moves to dismiss the complaint and cause on the ground that the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the first, fifth, ninth, tenth and fifteenth amendment to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of Florida.

Defendant's Motion to Dismiss and/or Quash

WHEREFORE, Defendant prays that this Court dismiss or quash the complaint.

KASTENBAUM, MAMBER, GOPMAN, EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss and/or Quash was mailed this day of May, 1966 to SHUTTS & BOWEN, First National Bank Building, Miami, Florida, and MULLER, SCHENERLEIN & BARE, 100 Biscayne Boulevard North, Miami, Florida, Attorneys for Plaintiffs.

Allan M. Elster

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
IN CHANCERY
No. 66C 5523 (Lee)

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES NOW, the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, by and through their undersigned attorneys, and files this, their Motion to Dissolve and/or Vacate Temporary Injunction, and as grounds for said Motion, says:

1. That on the 26th day of May, 1966, this Court entered a Temporary Injunction in the cause herein, enjoining the Defendant, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, from engaging in picketing and handbilling directed against the Plaintiff corporation.

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

2. The evidence now established shows that this Court did not and does not have jurisdiction of the subject matter of this suit, and that sole jurisdiction of this matter is in the National Labor Relations Board, and that this Court may not enjoin such activities, nor invoke its injunctive processes to prohibit such activity.

3. That the evidence now established further shows that the Plaintiff corporations, who have instituted the instant suit in this Court, are foreign corporations, i.e., a Liberian corporation, and a Panamania corporation, said corporations not authorized to do business in the State of Florida, as they have not obtained a permit to transact business in this State, as required under Chapter 613 of the Florida Statutes. Reference is made to the Certificates of the State of Florida, Office of the Secretary of State, attached hereto, and made a part hereof, and labeled Defendants Exhibits "A" and "B"; that the failure of these corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of the State, pursuant to Florida Statute 613.04.

WHEREFORE, the premises considered, the Defendant Union prays that this Court dissolve and/or vacate the Temporary Injunction heretofore entered, and thereafter, dismiss or quash the Complaint, and dismiss this lawsuit.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By Allan M. Elster
For the Firm

Defendant's Motion to Dissolve and/or Vacate Temporary Injunction

I Hereby Certify that a true and correct copy of the foregoing Motion to Dissolve and/or Vacate Temporary Injunction was on this 2 day of August, 1966, mailed to Shutts & Bowen, Esquires, Attorneys for Plaintiffs, First National Bank Building, Miami, Florida; and Muller, Schenerlein & Bare, Esquires, Attorneys for Plaintiffs, 100 Biscayne Boulevard North, Miami, Florida.

Allan M. Elster

Defendant's Answer

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN AND FOR DADE COUNTY

IN CHANCERY

Case No. 66C-5523 (Lee)

ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S.A., a Panamanian corporation,

Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Defendant.

COMES Now, the Defendant, International Longshoremen's Association, Local 1416, AFL-CIO, by and through its undersigned attorneys, and files this, its Answer to Complaint for Injunctive Relief, without waiving its defense that this Court lacks jurisdiction over the subject matter of this suit, and says:

FIRST DEFENSE

That this Court lacks jurisdiction over the subject matter of this action by virtue of the fact that interstate and/or foreign commerce is involved or affected, and by virtue of the fact that the Plaintiffs have charged the Defendant

Union with engaging in activities which are either protected or prohibited by the National Labor Relations Act, and that, therefore, sole jurisdiction of this matter is in the jurisdiction of the National Labor Relations Board, and that this Court may not enjoin the activities complained of in the Complaint.

SECOND DEFENSE

That the Plaintiffs have charged the Defendant Union with engaging in activities which are protected by the Free Speech provisions of the First, Fifth, Ninth, Tenth and Fifteenth Amendments to the United States Constitution and by Section 13 of the Declaration of Rights of the Constitution of the State of Florida, and that, therefore, due to the fact that the activities charged to the Defendant Union are protected by the Free Speech provisions of the United States Constitution and by the Florida Constitution, as enumerated above, this Court may not enjoin said activities.

THIRD DEFENSE

That the Complaint fails to state a cause of action for which relief can be granted, in that the Complaint fails to allege that the activities charged to the Defendant Union were for unlawful purposes, and that the picketing was conducted in an illegal manner.

FOURTH DEFENSE

That the Plaintiff corporations who have instituted the instant suit in this Court are foreign corporation, i.e., a Liberian corporation, and a Panamanian corporation; that said corporations are not authorized to do business in the State of Florida, since they have not obtained a permit to

transact business in this State pursuant to Florida Statute 613.01. The failure of these foreign corporations to obtain a permit to transact business in the State of Florida precludes these corporations from maintaining an action in a State Court of this State, pursuant to Florida Statute 613.04. Reference is made to Defendant's Exhibit A, attached hereto.

FIFTH DEFENSE

That this Court lacks venue over this cause insofar as it relates to the Plaintiff, Ariadne Shipping Company, Limited, a Liberian corporation, in that the activities charged by the said Plaintiff corporation in the Complaint against the Defendant Union, show that this Plaintiff corporation does business solely in Broward County, Florida, and that the picketing and handbilling activities complained of by this Plaintiff corporation as allegedly conducted by the Defendant Union were conducted exclusively against the Plaintiff corporation in Broward County, Florida, and that, therefore, sole jurisdiction of this cause insofar as it relates to the activities of the Defendant Union against the Plaintiff corporation, Ariadne Shipping Company, Limited, a Liberian corporation, lies in Broward County, Florida.

SIXTH DEFENSE

1. Defendant is without knowledge as to the allegations in Paragraph 1 of the Complaint, and, therefore, neither admits nor denies said allegation, and demands strict proof thereof.

2. Defendant admits Paragraph 2 of the Complaint, insofar as it clearly states that the Defendant Union is a labor organization, an unincorporated association; that De-

fendant Union maintains an office at 816 Northwest 2nd Avenue, Miami, Florida, and that jurisdiction of this Defendant Union encompasses the loading and unloading of ships at Miami, Florida. Defendant denies all other allegations of such Paragraph 2, which either by inference or by allegation, allege that the jurisdiction of the Defendant Union is limited to the labor of loading and unloading ships at Miami, Florida.

3. Defendant denies the allegations of Paragraph 3 in the Complaint.

4. Defendant admits that it engaged in picketing and handbilling activities on the dates and at the premises alleged in Paragraph 4 of said Complaint, and admits that the legend on the picket signs as portrayed in Paragraph 4 of said Complaint is a correct portrayal of one of the legends utilized by the Defendant Union on its picket signs. Defendant denies all other allegations of said Paragraph 4.

5. Defendant denies Paragraphs 5, 6, 7 and 8 of the Complaint.

SEVENTH DEFENSE

As an for an additional affirmative defense, Defendant alleges that a labor dispute existed between the Labor Union and the Plaintiff Corporations, and that this labor dispute is evidenced not only by the legend on the picket signs, as alleged in the Complaint, but is further evidenced by an additional legend utilized by the Defendant Union, said legend not alleged in the Complaint, and said legend stating that the Plaintiff Corporations maintain sub-standard wages and working conditions lower than those established in the area by the Defendant Union.

Defendant's Answer

EIGHTH DEFENSE

As and for an additional affirmative defense, Defendant alleges that the injunctive order entered by this Court on the 26th day of May, 1966, which enjoined the Defendant Union from engaging in certain activities, goes beyond the scope of the allegations of the Complaint, in that it enjoins the Defendant Union from engaging in activities which were not complained of in the Complaint.

KASTENBAUM, MAMBER, GOPMAN,
EPSTEIN & MILES
Attorneys for Defendant

By ALLAN M. ELSTER
For the Firm

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer to Complaint for Injunctive Relief was on this 1 day of July, 1966, mailed to Shutts & Bowen, Esquires, Attorneys for Plaintiffs, First National Bank Building, Miami, Florida; and Muller, Schenerlein & Bare, Esquires, Attorneys for Plaintiffs, 100 Biscayne Boulevard North, Miami, Florida.

ALLEN M. ELSTER

Order of Circuit Court, Dade County, Florida, Amending Answer Nunc Pro Tunc, Filed and Entered May 11, 1967

In the Circuit Court of the Eleventh Judicial Circuit of Florida

Ind and For Dade County

In Chancery

Case No. 66C-5523 (Lee)

Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Co., S.A., a Panamanian corporation,

Plaintiffs,

—vs—

International Longshoremen's Association, Local 1416, AFL-CIO,

Defendant.

Order Amending Answer Nunc Pro Tunc

This Cause, coming on to be heard, on the motion of Defendant, and Stipulation of respective counsel for Plaintiff and Defendant, for an Order permitting the Defendant to amend its answer, nunc pro tunc, to include therein the defense that the picketing engaged in by the Defendant was protected by the Fourteenth Amendment to the Constitution of the United States, and the Court, recognizing the Stipulation between counsel, and being otherwise fully advised in the premises, it is, upon consideration,

Ordered, Adjudged and Decreed, that the Defendant's Answer to the Complaint is hereby amended, nunc pro

tunc, to insert therein, in its Second Defense, the word Fourteenth, so that the third line of the said Defense shall read as follows:

"....provisions of the First, Fifth, Ninth, Tenth, Fourteenth and Fifteenth Amendments . . ."

DONE AND ORDERED in Chambers in the Dade County Courthouse, Miami, Florida, this 1 day of May, 1967.

THOMAS E. LEE, JR.

.....

Judge, Circuit Court

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

[11] Mr. Gopman: Then, if the basis of his suit is a tort action, he does not have the right to come here and ask for an injunction. He should take it some place to seek a remedy.

Before we get into that, we have a motion to dismiss on the ground the same cases are before the Board. Motion to dismiss on the grounds of enjoining of this picketing would violate the First, Fifth and Fourteenth Amendments to the Constitution; that is, free speech, purely.

* * * * *

[16] * * *

The Court: I have sustained the objection.

I do not think it would make any difference if they agreed, if counsel for plaintiffs agreed that they had substandard safety conditions; and I think the Court could probably take judicial notice of that—I am not going to do so at this point—but these foreign flag vessels do have substandard safety conditions as compared with American flag vessels.

Can you agree with that, counsel?

Mr. Muller: I wouldn't say substandard. I would use the term "different."

The Court: They have a lesser standard or less minimum standard required than do American ships.

* * * * *

[20] * * *

Mr. Gopman: With respect to whether or not it is a labor dispute, we refer to Marine Cooks and Stew-

ards AFL versus Panama Steamship Company, 362 (U.S.) 365; whereas, the United States Supreme Court ruled:

". . . A Federal District Court erroneously determined that, notwithstanding the existence of a labor dispute within the meaning of the Anti-Injunctive provisions of the Norris-LaGuardia Act, it had jurisdiction [21] to enjoin a union from circling a vessel with a picket boat as it entered an American port, on the ground the union's activities amounted to unlawful interference with foreign commerce and with the international economy of a vessel registered under the flag of a friendly foreign power.

"Such condition was not illegal under any statute or persuasive United States authority, nor was it concerned with the internal economy of the vessel since the union was interested in protecting the job opportunities of its own members and was not concerned with the interests of the foreign crews on the vessel . . ."

The Court: When was this case?

Mr. Gopman: This is a 1959 case, your Honor.

The Court: Go ahead with the next one.

Mr. Gopman: Here is a case where—By the way, your Honor, that was—I gave you that.

Now we have the 1963 case. It is Marlindo Compania Naviera S/A versus Seafarer's International Union of North American, Washington Superior Court case—we do not have a better citation than 47

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Labor Cases, [22] Paragraph 18,252. That is the CCH case.

Mr. Muller: What is the year?

Mr. Gopman: 1963.

The Court: Who is the plaintiff in that case?

Mr. Gopman: The ship's company was the plaintiff.

The Court: American or foreign flag?

Mr. Gopman: Foreign flag.

The Court: What does it say?

Mr. Gopman: It says:

"Court of a state, in which a foreign flag ship manned by a foreign crew, was docked, had no jurisdiction over a suit by the foreign owner of the ship to the extent that the action sought injunctive relief against picketing of the ship by an American union which resulted in a refusal of another union to unload the docked vessel, since the conduct complained of was within the exclusive jurisdiction of the National Labor Relations Board.

"The union activity falling within the provisions of the National Labor Relations Act and the ship owner qualifying as a person under the definitions [23] of terms in that Act, the State court was preempted of jurisdiction."

Again, we have a case from Louisiana. South Georgia Company, Ltd. versus Marine Engineers Beneficial Association. This case—again, we have no better citation than the labor case citation—44 Labor Cases, Paragraph 17,481.

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

"The picketing of a foreign vessel to protest the loss of jobs by United States seamen with the utilization of that particular ship to transport grain purchased by a foreign government under the Agricultural Trade Development and Assistance Act is a labor dispute within the meaning of the National Labor Relations Act. Therefore, the jurisdiction of a State court to enjoin the picketing is pre-empted by the National Labor Relations Board when it is not shown that upon application the National Labor Relations Board has declined jurisdiction."

They can do the same thing in this case, walk across the street and file there; and immediately get a decision from the Board as to whether or not they would take or decline jurisdiction. The Board will say: "We will" or "We will not take jurisdiction." And then [24] later on they will say, "We will" or "We will not enjoin this," but the first thing is whether they will take jurisdiction in this case.

• • • • •

[26] • • •

Mr. Muller: There is no question whatsoever that the National Labor Relations Board does not have jurisdiction under these foreign flag cases.

To give the Court a little background—prior to 1963, there were attempts by the NMU Seafarers to organize these cruise ships up and down the East Coast.

A number of petitions for election were filed. During that time—some were won and some were not

--

won. At that time, one of the foreign flag group of ships enjoined the Regional Director of the National Labor Relations Board in Washington and another in Florida—enjoined the employer in Washington, D. C. from proceeding with an election.

The United States Supreme Court took their cases and issued its decision in February, 1963, holding clearly there is no jurisdiction in National Labor Relations Board in these foreign flag ships—or over the foreign flag ships.

Now, I couldn't catch all the names [27] that counsel read, but several of the cases, I know, have turned on the issue the employer goes into Federal court and is hit with the Norris-LaGuardia Act.

The court says, "We cannot give you an injunction on this," and they cite Norris-LaGuardia. And, I think, in one of the cases, counsel cited that.

But as far as this complaint going before the National Labor Relations Board, it is not so. I have a case here: Sociedad Nacional de Marineros versus McCulloch, 372 (U.S.) 10.

They decided in February, 1963, that it very clearly sets out there is no jurisdiction of the National Labor Relations Board—

The Court: Do any of these local Circuit Courts have jurisdiction over any of these cases?

Mr. Muller: This Court has jurisdiction.

Is that what you are asking about, Judge?

The Court: What one are you talking about? Are there any other cases presently pending in the Circuit Court on these matters?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Mr. Muller: Not that we know of.

The Court: Wasn't there another suit filed?

[28] Mr. Muller: Yes; but that was not against a foreign flag corporation. That was Eastern Steamship Lines. They are in Florida and they were enjoined against picketing against Eastern.

Mr. Gopman: Solely because that company did not operate the vessel.

Mr. Muller: Judge, there is not the slightest question the National Labor Relations Board does not have jurisdiction in this case.

The Court: That is the problem I have. It is my understanding that the National Labor Relations Board does not and has not in several years taken jurisdiction in any case of a foreign flag vessel; and it is its policy it doesn't because of a Supreme Court decision and as a result of the United States' policy and the President and everybody else.

Mr. Muller: That is the rationale of this case.

Mr. Gopman: But that is limited to the activities that go on in the vessel outside of the American waters. For the elections by the employees of that vessel or the ship's sailors, it has nothing to do with the employees while they are on American [29] shores and only engaged in activities on American shores.

There are cases where they have taken jurisdiction—they can take jurisdiction.

* * * * *

[31] * * *

The Court: Why are you picketing?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Mr. Gopman: We are picketing to require the boat owner to pay to employes doing the work of loading and unloading the boat in the docks here—not outside the three-mile limit —wages we have gained for our employees. Nothing else. That is all. That is what we seek.

• • • • •

[42] • • •

CLEVELAND TURNER, was called as a witness by the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Gopman:

Q. Please state your full name. A. Cleveland Turner.

[43] Q. What is your occupation? A. President of the National Longshoremen's Association, Local 1416, AFL-CIO, Miami, Florida.

The Court: Did you succeed Judge Henderson?
The Witness: Yes.

By Mr. Gopman:

Q. Mr. Turner, were you in charge of the picketing going on, which we have been discussing here? A. Yes.

Q. What type of picketing sign did you display in Miami? A. On the ship, we displayed a substandard wage sign on the ship loading cargo. In front of the International Terminal, we put the unsafe sign.

The Court: When did you put up those signs? At what time?

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

By Mr. Gopman:

Q. At what time did you cause the picket to carry the substandard wage sign? A. Whenever a ship docks. The ship docks and we put our sign up—the substandard wage sign.

Q. Specifically, what type of work were you interested in protesting the payment of substandard wages? [44] A. Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage.

Q. Were these performed by employees of the ship, to your knowledge? A. Part of it by employees of the ship and some of it by outside labor.

Mr. Gopman: I have no further questions.

Cross Examination by Mr. Leslie:

Q. The only question I have is what day was this we are talking about? Was this the past Monday? A. The past Monday they didn't load ship stowage.

Q. I mean, your sign. A. Last Monday, substandard wage sign.

Q. On this dock? A. No. Substandard wage sign on this dock—last Monday.

Q. Nothing on the Ariadne dock? A. The Ariadne—Friday a week ago, we had substandard wages.

Q. That is the one you have been enjoined—I mean, did you have a sign saying the Ariadne paid [45] substandard wages? A. Monday, I didn't; but I had on the ship Monday in Miami.

Q. On the ship? You mean— A. In front of the ship, on the dock.

Transcript of Hearing Before Circuit Court, Dade County, Florida, on Plaintiffs' Motion For Temporary Restraining Order

Q. Is your union a trusteeship, by the way, sir? A. It is not.

Q. When was it—

Mr. Gopman: I object. It is not a trusteeship and—

Mr. Leslie: No further questions.

Mr. Gopman: Your Honor, I would like a stipulation from them that they are engaged in interstate commerce in sufficient amounts for the Board to take jurisdiction of each corporation.

Mr. Muller: I do not believe it is interstate.

Mr. Gopman: Foreign commerce in sufficient amounts over $50,000 worth of purchases.

The Court: In the local market?

Mr. Muller: We are engaged in foreign commerce and our receipts from such foreign commerce [46] is in excess of $50,000 annually.

Mr. Gopman: Okay.

Mr. Muller: The plaintiffs, that is.

• • • • •

[48] • • •

The motion to dismiss and quash on general grounds and Constitutional grounds and lack of jurisdiction and the supplemental motion to dismiss and quash on the basis of noncompliance with Florida Statute 613.01 and 613.02, are denied.

The Court finds there is no labor dispute involved here, and this Court has jurisdiction; that the acts of the union are in violation of Florida law; and that the picketing, the enjoining of the picketing would

not be an enjoining of free speech as guaranteed by the Constitution of the United States; and, therefore, the union will be enjoined as prayed for in the Complaint; and the plaintiffs will be required to post a bond in the amount of $5,000.

Mr. Muller: Would the Court find the [49] National Labor Relations Board has no jurisdiction in this matter?

The Court: The Court so found by saying there is no labor dispute involved; and it involves all the matters that are involved in this Court.

* * * * *

In the Supreme Court of the United States

October Term, 1969

No. ~~1517~~ 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1416, AFL-CIO,
Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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No. 1517

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1416, AFL-CIO,
Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

Petitioner, (hereinafter referred to as "the Union"), requests a writ of certiorari to review the judgment of the District Court of Appeal, Third District, State of Florida, in this case.

OPINION BELOW

The Florida District Court of Appeal, Third District, reported at 215 So.2d 51, affirmed the permanent injunction granted to the Respondents by the Circuit Court of Dade County, and the Supreme Court of Florida denied certiorari.

JURISDICTION

Petitioner contends jurisdiction of this Court is invoked under 28 U.S.C. §1257(3). The judgment of the District Court of Appeal was filed on October 29, 1968. The order of the Supreme Court of Florida was filed on March 19, 1969.

QUESTIONS PRESENTED

According to the Union the petition presents the following questions:

1. Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port.

2. Whether the issuance of an injunction against peaceful picketing, protesting substandard wages, violates petitioner's rights under the First and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Union says the following constitutional and statutory provisions are applicable:

Article VI, 2nd Paragraph;
First and Fourteenth Amendments;
National Labor Relations Act, §§7;8(b)(4),(7); and 9(a),(b).

STATEMENT OF THE CASE

Respondents are foreign corporations who operate one foreign-flag ship (S. S. ARIADNE) on passenger cruises to foreign ports from Miami, Florida. (There was a second foreign-flag ship, S. S. BAHAMA STAR, cruising to foreign ports up to November 1, 1968, but it has ceased operating, no longer is owned by Respondent, and thus the question is moot as to it.) However, Respondents, for clarity, will hereinafter still be referred to as "Foreign Vessels".

The Foreign Vessels, owned by foreign corporations and under foreign registry, were operated by foreign seamen, none of whom were members of the Union. These crewmen signed and were covered by Ships Articles of Liberia and Panama.

These ships carried only passengers. They carried no cargo whatsoever. **There was no loading, unloading, or storing of cargo.** Trial counsel for the Union well knows these facts. It was in response to his cross-examination

that T. F. Kane so testified[1] in the companion case,[2] involving the same Union, the same type picketing, and the same counsel for the parties.

It is now clear why the record is void of any evidence of actual longshore work done in regard to the Foreign Vessels, just as the record is void of any evidence of actual hiring of employees to do this non-existent work. Likewise the record does not contain any reference to wage scales or wages leading the District Court of Appeals below to agree with the trial court "that no real dispute over wages really existed."

Petitioner's whole claim is based on the bald assertion that the Foreign Vessels employed Americans to do longshore work in Florida ports. Not only is this unsupported in the record, it is categorically false. The true facts have

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[1]*Eastern Steamship Lines, Inc. v. International Longshoremen's Association*, 66C-5298, testimony under oath on May 20, 1966 before the Honorable Gene Williams, Circuit Judge in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, which was the trial court action from which the Union appealed in the cases in footnote 2.

Q. (By Mr. Gopman) What about the cargo which is loaded or unloaded from your ships?
A. We don't have any cargo.
Q. No cargo at all?
A. No.
Q. On either vessel?
A. Either vessel.
Q. Do you load or ship automobiles?
A. No, sir, not any more. I haven't done it for a long time.
Q. You used to do that?
A. Don't take cars either way.

[2]*International Longshoremen's Association, Local 1416, AFL-CIO v. Eastern Steamship Lines, Inc.*, Fla.App.1966, 193 So.2d 73, and Fla. App.1968, 211 So.2d 858, where the same District Court of Appeal first affirmed the granting of a temporary injunction and then the granting of a permanent injunction.

been pointed out to the trial court, the appellate court and the Florida Supreme Court by the briefs and record. That is why the trial court found "that there is no labor dispute" and why this finding was twice affirmed on appeal (after the temporary injunction and again after the permanent injunction) and not disturbed on certiorari to the Florida Supreme Court. It also explains why the Union had no evidence to the contrary to present to the trial court between the granting of the temporary injunction[3] (in May, 1966) and the granting of the permanent injunction (in May, 1967), a period of over eleven months.

The Union first picketed claiming, "Eastern Steamship Co. refuse to maintain adequate safety conditions for passengers and employees." This was enjoined and a few days later the Union picketed again, using the same signs only substituting the ships' names for "Eastern". Immediately thereafter a verified complaint was filed against the Union stating that (1) neither the Union nor its members worked for the Foreign Vessels or held themselves out for employment on the vessels, (2) while picketing along side the ships the pickets walked among embarking and disembarking passengers so that their presence was conspicuous and noticed by the passengers, passing out handbills to the Miami passengers implying that the vessels were unsafe, (3) the signs contained statements that were false, untrue and libelous, (4) there was no labor dispute between the owners of the foreign vessels and the Union, (5) the foreign-flag ships were operated by foreign corporations and the seamen on the foreign vessels were covered by Ships Articles of Panama

[3]Affirmed on appeal, *International Longshoremen's Association, Local 1416, AFL-CIO v. Ariadne Shipping Company, Limited,* a Liberian corporation, et al, Fla.App.1967, 195 So.2d 238.

and Liberia, and (6) the unlawful picketing and libelous statements constituted malicious interference with the business relations of the Foreign Vessels.

At a hearing on May 26, 1966, six days after the Union was enjoined from picketing Eastern, the Union through its attorneys made it abundantly clear that the Union was concerned with the "safety conditions" aboard the ships. Union counsel stated, "If you read the sign, your Honor, that is exactly what we are complaining about in the sign — the safety conditions are improper."

The trial court enjoined the Union from committing a tort, that is, from continuing unlawful acts in derogation of the rights of the Foreign Vessels. The handbills passed out to the passengers in Miami clearly were libelous and by the false statements therein the passengers were encouraged not to do business with the Foreign Vessels. The handbills make no reference to any labor dispute. (Indeed, this Union does not even hold its members out for employment in operating ships. The Foreign Vessels have no need of the Union's longshoring services. Thus, clearly there could be no labor dispute.)

The Union thereafter abandoned its claim regarding safety thereby conceding that the injunction was proper in part. The facts regarding the safety accusations have been reiterated so this Court can see what the Union actually attempted to do before falling back on its unsupported and untrue longshore and wage allegations. But since these claims relate to alien seamen aboard foreign-flag ships owned by foreign corporations, they were also properly enjoined by the trial court, whose action was affirmed on appeal by the District Court of Appeal below. See **McCulloch v Marineros de Honduras,** 372 U.S. 10, (1963), and **Incres Steamship Company, Ltd. v. International Maritime Union,** 372 U.S. 24 (1963).

REASONS FOR DENYING THE WRIT

1] Petitioner seeks to avoid the decisions of this Court in the **McCulloch** and **Incres** cases, supra. Previously the Union had candidly admitted, in their brief to the District Court of Appeal below that these two decisions "touch on the subject, and signal the establishment of significant precedent." Now to avoid this binding effect, Petitioner tries to claim that there is involved "traditional longshore operations, the loading, unloading and storage of cargo", Union's Petition at page 8. Respondents categorically deny this and further state that such allegations are totally unsupported by the record. These are foreign corporations, owning foreign-flag ships, which operate cruises to foreign ports transporting people not cargo. The crew is foreign and none belong to the Union nor are any of the Union members employed to perform any work in connection with the Foreign Vessels.

In the **McCulloch** case, supra., regarding the National Labor Relations Act, this Court unequivocally held:

> . . . the jurisdictional provisions of the Act do not extend to the maritime operations of foreign-flag ships employing alien seamen. 372 U.S. 13.

The wisdom of the decision is obvious when the Court goes on to point out that any other decision might require that the National Labor Relations Board inquire into the internal discipline and order of all foreign vessels calling at American ports. The Court continues:

> Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice. 372 U.S. 19.

The **Incres** case presents the same basic holding. Consequently, it need not be further elaborated upon except to say that, like **McCulloch,** it was a case of a foreign ship operated by foreign seamen under foreign Articles, flying a foreign flag, and being picketed by an American union. Respondents believe these two cases are controlling authority. It is interesting to note that while the Union cites many cases, none are factually similar, i.e. foreign ships employing alien seamen being picketed by an American union.

2] The Union attempts to argue justification for its actions by relying on the Freedom of Speech provision of the Constitution. The fallacy of this argument is that the court enjoined the Union from committing a tort, that is, from continuing unlawful acts in derogation of the rights of the Foreign Vessels. The handbills passed out to the passengers in Miami clearly were libelous and by the false statements therein the passengers were encouraged not to do business with the Foreign Vessels. The handbills make no reference to any labor dispute. That portion of the unlawful conduct of the Union directed toward discouraging the passengers from doing business with Foreign Vessels was unlawful and in violation of Florida law.

Such picketing is much more than "free speech"[4]. This Court, in **Hughes v. Superior Court of California,** 339 U.S. 460,464 (1950) so characterized it:

> But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated."

This holding has been quoted with favor by Florida appellate courts, which have often enjoined picketing such as this. **Young Adults for Progressive Action, Inc. v. B & B Cash Grocery Stores, Inc.,** Fla.App. 1963, 151 So.2d 877, and **N.A.A.C.P. v. Webb's City, Inc.,** Fla.App. 1963, 152 So.2d 179.

The Union's current claim that they were protesting substandard wages could relate only to alien seamen aboard a foreign-flag ship and this activity was also properly enjoined by the trial court. See **McCulloch** and **Incres** cases, supra.

3] With only one vessel involved, Petitioner's claim that this case has "substantial general importance" is misplaced. As it has been pointed out, no longshore operations are involved. Respondents only transported passengers to foreign ports, not cargo. No member of the foreign crew belongs to this Union and conversely no member of this Union works aboard the Foreign Vessels. It is solely now a matter involving one foreign-flag ship and the foreign corporation which owns it.

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[4]In the same manner, yelling "fire" in a crowded theater when there is no fire is not protected as "free speech".

The Union has had its day twice (temporary injunction and permanent injunction) in the trial court, together with many other hearings in the trial court on various motions. It has had two additional chances on appeal (the District Court of Appeal decision below and the same Court's affirmance of the temporary injunction), plus an unsuccessful attempt to get the Supreme Court of Florida to grant certiorari. This Petition is merely the Union asking for still another judicial determination even after these five attempts have failed (two in the trial court, two in the Appellate Court and one in the Supreme Court of Florida). Five times the Foreign Vessels' right to injunctive relief has been sanctioned. Respondents sincerely believe the Union has been accorded every reasonable opportunity for legal redress.

CONCLUSION

For the foregoing reasons it is urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the District Court of Appeal, Third District, State of Florida, was air mailed, postage prepaid, to the attorneys for the Petitioner, LOUIS WALDMAN, ESQ., and SEYMOUR M. WALDMAN, ESQ., 501 Fifth Avenue, New York, New York 10017, this 30th day of July, 1969.

THOMAS H. ANDERSON

THOMAS H. ANDERSON

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1969

No. 231

(Formerly October Term 1968 No. 1517)

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

v.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

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Respondents.

PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

This reply is addressed to the only real contention made in respondents' brief in opposition to certiorari: that there were no longshore operations involved in this case and therefore petitioner's picketing could not have been directed at the use of non-members of a longshore union to perform longshore work at rates below the established area standards.

1. Respondents' contention is totally unsupported by the record. Indeed, the only "citation" is to testimony in another case, before another judge, involving another company and other issues. This can hardly support the injunction issued herein on the present record. It likewise furnishes no support to the unfounded assertion in respondents'

brief (pp. 4-5) that the "true facts" were pointed out by the record herein to the Florida courts.

2. The only witness to testify in this case at any stage, from temporary restraining order to permanent injunction, testified flatly that the "type of work" which the pickets were protesting was "Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage." He further testified that such work was in fact performed both by "employees of the ship" and "by outside labor." (42a) Neither through cross-examination nor other means did respondents' counsel seek to challenge this testimony.

Indeed, on cross-examination the witness testified that the substandard wage picketing did not take place on one particular day as to which he was questioned because no loading was then being performed. However, he testified, in the previous week there was such picketing because loading did take place at that time (42a).

3. The burden of proof in this action for an injunction is plaintiffs', not defendant's. If plaintiffs wished to contend that there was no bona fide labor dispute because no longshore operations were being performed, then they carried the burden to make the necessary factual showing. Absolutely no such evidence was introduced, no concession was sought from or made by defendant, no contention to this effect appears anywhere in the record, and the Florida courts' reliance on the decisions in *Incres SS. Co.* v. *IMWU,* 312 U. S. 24 and *McCulloch* v. *Sociedad de Marineros de Honduras,* 372 U. S. 10, shows that this was not the basis of the decisions below.

4. In any event, the loading of ships' stores and supplies from the dock to the vessel and the loading and unloading of passengers' baggage is traditional longshore work per-

formed on all passenger vessels. This work, as indicated in our petition for certiorari, falls within the preemptive jurisdiction of the NLRB and is not, and should not be, covered by the decisions in *Incres* and *Sociedad Nacional de Marineros de Honduras.**

5. Assuming that a factual issue were tendered as to plaintiffs' performance of longshore work—which, on this record, is not the case—such an issue would be for the NLRB to determine, not a state court. To permit NLRB jurisdiction to be totally bypassed and state injunctions to issue through the device of allowing the state court to determine the underlying factual issues is to permit the erosion of Board authority and the truncation of its potential jurisdiction. It is just such a result which the preemption doctrine is designed to prevent; and it is for this reason that such underlying issues as the existence of a labor dispute, the status of personnel as supervisory or non-supervisory, and similar threshold factual questions, must first be decided by the Board.

6. Respondents' preoccupation with the "safety" signs is obfuscatory of the issues herein. As early as the initial hearing on the temporary restraining order, the union made clear that its prime concern was to vindicate and defend its right to picket against the performance of longshore work by non-union members at substandard wages (40a-43a). The trial court nevertheless enjoined such picketing in paragraph 3 of the restraining order (18a), which

* It is likely that the term "ship's stowage" appearing twice in the transcript of Mr. Turner's testimony (42a), was intended to be "ships stores" in the actual testimony of the witness and was erroneously transcribed. However viewed, the testimony of this witness does establish the performance of longshore work on respondents' vessels, particularly in the absence of conflicting evidence.

was later extended into a permanent injunction (16a). In all state appellate proceedings, petitioner's primary attack was upon this decretal provision.

7. Whether respondents operate one vessel or one hundred, the principle underlying the Florida decisions represents a frontal attack upon the jurisdiction of the NLRB over a major segment of longshore work and would totally disrupt labor relations in this vital industry. The decision below also deprives longshore workers of basic rights to free speech in circumstances under which such rights have been upheld by the decisions of this Court.

CONCLUSION

For all the foregoing reasons, and for those set forth in our petition for certiorari, we respectfully urge that the petition be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

v.

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Respondents.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

BRIEF FOR PETITIONER

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Respondents.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Florida District Court of Appeal, Third District, affirming the judgment of permanent injunction, is reported at 215 So. 2d 51 (A. 49a-54a).[1] The opinion of the same Court affirming a temporary restraining order is reported at 195 So. 2d 238 (A. 48a).

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[1] The Supreme Court of Florida denied, without opinion, a petition for certiorari to review the decision of the District Court of Appeal (A. 55a-56a). The order under review herein is that of the District Court of Appeal affirming the permanent injunction. *Retail Clerks Local 1625* v. *Schermerhorn*, 373 U. S. 746.

Jurisdiction

The order of the Supreme Court of Florida denying certiorari was entered on March 19, 1969. The order of the District Court of Appeal was entered on October 29, 1968. The petition for a writ of certiorari was filed in this Court on June 13, 1969, and was granted on October 13, 1969.

The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

Constitutional and Statutory Provisions Involved

The relevant Constitutional provisions are:

Article VI, 2nd Paragraph (Supremacy Clause);

First and Fourteenth Amendments;

The relevant statutory provisions are:

National Labor Relations Act, §§ 7, 8(b)(1), (2), (4) and (7) and 9(a) and (b); 29 U. S. C. §§ 157, 158(b)(1), (2), (4), and (7), and 159(a) and (b).

The text of these provisions is set forth in the Appendix to this brief (*infra*, pp. 39-45).

Questions Presented

1. Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port.

2. Whether the issuance of an injunction against peaceful picketing publicizing substandard wages violates peti-

tioner's rights under the First and Fourteenth Amendments to the United States Constitution, where there is neither evidence, finding, nor other form of judicial articulation of any illegal objective under state or federal law.

STATEMENT

The Facts

Respondents operate at least two vessels under foreign registry on Caribbean cruises originating in Miami and Fort Lauderdale, Florida. Local 1416, an affiliate of the International Longshoremen's Association, AFL-CIO, represents longshoremen in the Miami-Fort Lauderdale area.

The ordinary longshore work of loading and stowing ship's cargo and ship's stores, loading and unloading passengers' baggage, and loading automobiles aboard respondents' vessels was performed, in these Florida ports, not by union longshoremen but partly by ship's employees and partly by outside personnel hired locally for the occasion. Their wages were below the area standards established in local ILA agreements. Accordingly, on days when these longshore operations took place, Local 1416 posted a picket on the dock in front of the ship protesting the payment of substandard wages to personnel performing longshore functions. On days when no loading occurred, no picketing took place (A. 44a-45a).

On at least one occasion the union also displayed a sign calling attention to unsafe shipboard conditions, dangerous to passengers and employees.[2]

[2] Although the trial judge enjoined these "safety" signs, he specifically declined to find them false and, indeed, assumed their truth as a matter within his judicial notice (A. 32a). No factual evidence on this issue was ever presented by either side. The trial judge apparently viewed the charges of unsafe shipboard condi-

The Litigation

Upon service of the complaint and request for a temporary restraining order, the union filed a motion to dismiss for lack of jurisdiction, asserting that the issues raised by respondent fell within the exclusive jurisdiction of the National Labor Relations Board (A. 12a-13a). A companion motion to dismiss was filed on the ground that the activities complained of were protected by the First and Fourteenth Amendments (A. 14a).

The only hearing held at any stage of this litigation took place upon the return of the application for a temporary restraining order. Respondents, though plaintiffs and moving parties, adduced no evidence whatsoever. Petitioner called two witnesses, one of whom attempted to testify on the truthfulness of the "safety" signs but was balked by objections successfully interposed (A. 31a). The other witness testified to the message contained on the area standards picket sign, the occasions when and place where it was displayed, and the nature of the protested work being performed at substandard wages (A. 44a-45a). His testimony, consuming approximately two pages of the record, constitutes the entire evidence in this case on the issues here under review.

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tions, though true, as beyond the legitimate interests of a labor union and therefore unjustified, enjoinable interference with respondents' business. Between the issuance of the temporary restraining order and the permanent injunction, the federal authorities imposed stricter safety requirements on foreign flag passenger vessels using American ports, and the union thereupon abandoned its appeal from this branch of the injunction. Notwithstanding such express abandonment, the District Court of Appeal inexplicably held this decretal provision to be justified in order "to counter . . . appellant's false accusations regarding the unsafeness of the ships." In any event, petitioner regards this issue as abandoned, and has not sought review of those provisions of the injunction in this Court.

At the hearing on the application for temporary injunctive relief, petitioner's counsel reiterated the union's contention that the preemption doctrine applied to picketing directed at the payment of substandard wages for longshore work. The trial court accepted the company's argument that the decisions in *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U. S. 10 and *Incres Steamship Co., Ltd.* v. *IMWU*, 372 U.S. 24, deprived the NLRB of jurisdiction over longshore operations performed on foreign flag vessels in American ports, and not merely disputes involving the labor relations of the ship's crew (A. 27a-29a; 32a-40a; 46a).

At the hearing, union counsel also urged the applicability of the Constitutional guarantees of free speech, noting that the companies had not ascribed any illegal or prohibited purpose to the area standards picketing and had not presented any evidence on this point (A. 29a-30a). In his words "They have not said this picketing is for any purpose. . . . They are only saying they are losing business because of it." He expressly disclaimed any union purpose to replace the existing personnel with union members and emphasized the absence of any evidence to the contrary (A. 30a; 39a). Company counsel argued merely that respondents have "a lawful right to conduct our business in a lawful manner. We, under the laws, may not have that lawful right interfered with." (A. 42a).

At the conclusion of the hearing, the court concluded "that the National Labor Relations Board has no jurisdiction in this cause, that there is no labor dispute; and that this Court has jurisdiction. . . ." It also concluded "that the acts of the union are in violation of Florida law [without specifying what law or by virtue of what illegal means or prohibited purpose]; and that the picketing would not be an enjoining of free speech as guaranteed by the Constitu-

tion of the United States" (A. 46a; 16a). The decretal provisions of its restraining order enjoined:

> "3.—Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;"
>
> "4.—By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs." (A. 16a).

The union took an interlocutory appeal to the District Court of Appeal on the issue of jurisdiction, again urging the preemptive force of the federal labor laws. The temporary restraining order was affirmed *per curiam* on the authority of *Sociedad Nacional* and *Incres* (A. 48a).[3]

The union then filed its answer in the trial court, alleging, among other defenses, the exclusive jurisdiction of the NLRB and the free speech guarantees of the Federal Constitution (A. 18a-19a; 25a). Without adducing further proof, the company moved for summary judgment making the temporary injunction permanent; and this motion was granted by the trial court (A. 47a).

Both federal contentions were also pressed on appeal. The District Court of Appeal acknowledged that the testimony at the hearing on the temporary restraining order—the only hearing had in the case—"tended to show . . . that

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[3] The single state court case cited by the District Court of Appeal dealt with the union's alternative contention that the companies had failed to qualify under Florida law and thus lacked standing to sue in the Florida courts.

the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages". Holding that state jurisdiction was not preempted, the District Court of Appeal concluded that the injunction properly "embodied the court's finding that no real dispute over wages really existed, and therefore, publicizing accusations as to that grievance was also forbidden" (A. 52a-53a).[4]

The union then petitioned the Supreme Court of Florida for a writ of certiorari to review the decision of the District Court of Appeal, again urging the applicability of the preemption doctrine and free speech guarantee. Under Florida law, the State Supreme Court has jurisdiction over this type of case only to resolve conflict between two District Courts of Appeal or between the decision sought to be reviewed and decisions of the State Supreme Court. Consti-

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[4] Neither the opinion of the District Court of Appeal nor any order of the trial court explains the District Court of Appeal's comment that no "real" dispute over wages "really" existed. The trial court had concluded that there was no "labor dispute" and enjoined picket signs indicating that a "labor dispute exists between Defendant and Plaintiff by any reference to substandard wages." But there was neither evidence nor finding of a lack of "real" dispute: The message of the area standards picket sign was not attacked as, or held to be, factually untrue, nor was its professed objective shown, or held, to mask some other non-labor objective unrelated to wage scales. The trial court's statement as to the lack of a "labor dispute" would appear to be merely a conclusory capsulizing of one of the following legal theories: (1) a "labor dispute" is a dispute within the jurisdiction of the NLRB, and since this dispute is not within NLRB jurisdiction, it is not a "labor dispute"; or (2) inasmuch as Local 1416 did not represent any of the longshore employees of respondents, no "labor dispute" existed between the parties. That the District Court of Appeal probably had in mind the latter theory appears from its earlier recital "that none of the members in the appellant labor union are employed to perform any work in connection with the operation of the cruise ships involved herein; moreover, the union itself does not represent any of the employees who work on the ships" (A. 50a-53a).

tution of the State of Florida, Article V, Section 4(2); Florida Appellate Rules 4.5 c(6). Over the dissent of two Judges, the Supreme Court of Florida denied the petition for certiorari, "it appearing to the Court that it is without jurisdiction" (A. 55a).

Summary of Argument

I.

The exclusive jurisdiction of the National Labor Relations Board preempts state power to enjoin peaceful picketing in a dispute over longshore wage rates. Area standards picketing directed at preserving the union's established wage levels is protected activity under the Act. If, however, the professed objective were found to mask a secondary purpose or a coercive thrust at employees' free choice of bargaining representative, then the picketing would be arguably prohibited by the Act. In either event, the issue is exclusively for the Labor Board to determine. *San Diego Building Trades Council* v. *Garman*, 359 U.S. 236.

The Florida courts errroneously considered this case governed by the decisions in *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138; *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10; and *Incres Steamship Co., Inc.* v. *IMWU*, 372 U.S. 24. Those cases involved labor disputes between vessel and crew, and the Court's ruling that the Labor Board is without jurisdiction over "maritime operations" of sailors engaged in "operating ships" has no application to a dispute over longshore operations in American ports only.

None of the considerations underlying *Benz*, *Sociedad Nacional*, and *Incres* apply here. Since a ship and its crew sail throughout the world, NLRB regulation of the continuing labor relations between vessel and seamen would

have had major extraterritorial effects. Longshore operations, on the other hand, take place wholly within the geographical confines of a port, and Labor Board jurisdiction over American longshore operations is not extraterritorial.

For similar reasons, Board jurisdiction over the longshore disputes of foreign vessels does not conflict with the laws or administrative orders of the flag nation. These laws regulate shipboard labor relations only, and do not purport to govern longshore operations in ports of other countries. The danger of conflicting union certifications or bargaining obligations, so pronounced in *Benz, Sociedad Nacional and Incres,* does not exist here. Nor is there risk that foreign flag vessels will transfer their registry and remove themselves from American control in time of national emergency, merely because they may be required to pay American longshore rates for American longshore work.

The principle of comity embodied in the "law of the flag", also relied upon in *Benz* and *Sociedad Nacional,* applies only to the "internal affairs" or "internal discipline" of a ship. Longshore operations are performed on shore as well as on ship, usually by local employees, and have thus never been regarded as part of the internal affairs or discipline of the ship. Accordingly, neither international custom nor international treaties assuring the flag nation primary authority over a ship's internal affairs have any relevance. In other legal contexts, too, the distinction between longshore and maritime operations is well recognized. For example, foreign shipowners must cover their American shore-based employees, including longshoremen, under United States social welfare legislation, although foreign crew members are expressly excluded from such coverage.

The same distinction between seaboard and longshore operations has been applied under the National Labor Re-

lations Act. Most longshore work in this country is performed for foreign shipping lines, and Labor Board representation certifications have uniformly included all longshore employers, both foreign flag and domestic. The Board has also consistently taken cognizance of unfair labor practice charges arising out of the longshore disputes of foreign flag vessels, and its jurisdiction to do so has been confirmed by the courts.

The Board's preemptive jurisdiction is not affected by the fact that a portion of respondents' longshore work was done by members of the crew. The very fact that a portion of this work was also performed by local American residents confirms the need for exclusive decisional power in a single federal tribunal, statutorily qualified to assess the implications and significance of a longshore work force consisting of both foreign and American residents. But beyond this, the Board would have jurisdiction even if all the longshore work were done by ship's crew. For only seaboard labor relations are excluded from Board regulation. When the seaman no longer acts as such, but performs domestic, longshore work, with substantial shore-based contacts, the principle of *Benz* and *Sociedad Nacional* no longer holds. Any other result would permit crew members to perform numerous shoreside tasks in disregard of the traditional trade classifications of American labor, without any power in the Labor Board to assume jurisdiction of the disruptive labor disputes which would inevitably ensue. Such a totally unwarranted abnegation of usual territorial jurisdiction would frustrate the declared policy of the Act and is consonant neither with the provisions of the statute nor the controlling case-law.

Moreover, the rationale of the courts below would undermine and disrupt labor relations in the sensitive, complex longshore industry. Longshore collective agreements cover

foreign and domestic lines alike, since a longshoreman's work is performed interchangeably for both types of employer. The fragmentation of a heretofore unitary labor relationship, with a minor segment regulated by the national Labor Board and the major portion subject only to the diverse laws and determinations of the several states, would have potentially disastrous implications.

II.

Peaceful picketing which publicizes an employer's failure to pay prevailing wage rates is Constitutionally protected under the First and Fourteenth Amendments. Recognizing, however, that picketing is "free speech plus" the Court has upheld state injunctive power where the picketing has an objective prohibited by valid state policy.

The Court has insisted, however, that the state policy be defined and articulated by the state legislature or court, so that its consonance with First Amendment standards may be reviewed. The Court has also held that the evidence must show that the picketing was in fact for the proscribed purpose.

Here respondents produced no evidence at all, and the record gives no indication that the union purpose was anything other than that proclaimed on the picket sign itself: the publicizing of substandard wages. Nor did the Florida courts make any factual findings, ascribe to the picketing any particular objective, let alone an illegal one, or enunciate any state policy which the picketing may have contravened. The publicizing of substandard employment conditions is the main purpose of Constitutionally protected picketing, and this protection is not lost merely because the picketing union does not represent the company's employees. Accordingly, the injunction herein abridges petitioner's right to free speech and should not be allowed to stand.

ARGUMENT

I.

The National Labor Relations Act Preempts State Jurisdiction To Enjoin Peaceful Picketing in a Dispute Over the Wage Rates to Be Paid Employees Performing Longshore Work on Foreign Flag Vessels in American Ports.

Apart from the fact that respondents' vessels operate under foreign flags, there could not be even a colorable challenge to the exclusive preemptive jurisdiction of the National Labor Relations Board.

Peaceful primary picketing to protest wage rates below established area standards constitutes protected activity under Section 7 of the National Labor Relations Act. *NLRB* v. *Fruit & Vegetable Packers*, 377 U.S. 58, 62; *Steelworkers* v. *NLRB*, 376 U.S. 492, 498-499; *Youndahl* v. *Rainfair*, 355 U.S. 131, 139; *Garner* v. *Teamsters*, 346 U.S. 485, 500. If, on the other hand, on a factual record totally different from this one, the Labor Board concluded that the picketing had secondary objectives or coercive designs upon the free selection of employee representative, then it might well find the union activity prohibited under Sections 8(b)(4) or 8(b)(7) of the Act. E.g. *International Hod Carriers Local 41 (Calumet Construction Co.)*, 130 NLRB 78, rev'd, 133 NLRB 512; *Retail Clerks Local 344 (Alton Myers)*, 136 NLRB 1270; *Local 953 IBEW (Erickson Electric Co.)*, 154 NLRB 1301; *Retail Clerks Local 899 (Ted R. Frame)*, 166 NLRB No. 92; Note, "Illegal Picketing Under Section 8(b)(7)—A Reexamination", 68 Columbia L. Rev. 745.

But whether the activity be arguably protected or prohibited, state injunctive jurisdiction is clearly preempted. *Garner* v. *Teamsters*, 346 U.S. 485; *San Diego Building*

Trades Council v. *Garmon*, 359 U.S. 236; *Liner* v. *Jafco, Inc.*, 375 U.S. 301; *National Marine Engineers Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173; *Hanna Mining Company* v. *District 2, MEBA*, 382 U.S. 181. And preemption applies whether or not the pickets and the business being picketed occupy a proximate employer-employee relationship. *Hotel Employees Union* v. *Sax Enterprises*, 358 U.S. 270; *Retail Clerks, Local 560* v. *F. J. Newberry Co.*, 352 U.S. 987; *Pocatello Building & Construction Trades Council* v. *C. H. Elle Cont. Co.*, 352 U.S. 884. Moreover, a state court may not avoid the preemptive force of the NLRA by generalizing that no "labor dispute" exists between the parties or characterizing the dispute as not "bona fide". *Liner* v. *Jafco., Inc., supra*, 375 U.S. 301; *Local 438, Construction Workers* v. *Curry*, 371 U.S. 542.

In holding the National Labor Relations Board to be totally without jurisdiction of this controversy over longshore wage rates, the Florida courts relied upon three decisions of this Court dealing exclusively with the maritime, seaboard labor relations between a vessel and its crew. Although the Labor Board, with uniform judicial approval, has consistently assumed jurisdiction over the American longshore labor disputes of foreign flag vessels (*infra*, pp. 28-30), and although foreign vessels account for the overwhelming bulk of longshore work in American ports, this is the only case, to our knowledge, in which any court has denied the applicability of the federal labor laws to these American longshore operations.

We submit that the Florida courts have totally misread the Court's decisions which they erroneously considered controlling. Neither the holdings nor underlying rationale of these cases permit their narrow ruling, fashioned for the unique shipboard relations between vessel and crew, to be extended to the vastly different longshore operation of load-

ing and discharging cargo, baggage and ships stores, wholly within the territorial confines of an American port.

A. The Decisions in *Benz*, *Sociedad Nacional* and *Incres*.

The first of the triumvirate of decisions relied upon below was *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138. A foreign flag vessel temporarily in an American port was picketed by an American seagoing union in support of the economic demands of an exclusively foreign crew. The purpose was to compel the employment of striking crew members upon more favorable terms than were contained in their shipping articles, made in a foreign port under foreign law at the commencement of the voyage. Observing that United States administrative regulation of the contractual labor arrangements made abroad under foreign law would plunge the courts and the Labor Board into "a delicate field of international relations", the Court concluded: "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws." 353 U.S., at 143.

The problem of interference with foreign legal relationships and regulatory programs was posed even more directly in *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10. In that case the Board had ordered a representation election among the foreign crew members of a Honduran flag vessel upon the petition of an American seamen's union. The crew was then represented by a Honduran union certified under the Honduran labor laws. Under these laws of the flag nation, the petitioning American union would have been ineligible to act as bargaining representative, so that the potential result of the Board-ordered election was an irreconcilable conflict with Honduran law and administrative orders. Applicable treaties between the

United States and Honduras, moreover, entrusted regulation of the internal affairs of Honduran vessels to Honduran authority. The government of Honduras officially protested the Board's action to the United States government, and many maritime nations supported that protest through *amicus* briefs to this Court.

The Court noted that any attempt to justify Labor Board jurisdiction through a balancing of contacts might require Board inquiry "into the internal discipline and order of all foreign vessels calling at American ports. Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well." 372 U.S., at 19. Reviewing the history of the NLRA in light of the "well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship" and the consequent "possibility of international discord" and retaliation, the Court could "find no basis for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag . . ." 372 U.S., at 20. Accordingly, held the Court, "We have concluded that the jurisdictional provisions of the Act do not extend to maritime operations of foreign flagships employing alien seamen." 372 U.S., at 13.

On the basis of this decision, the Court, in the companion case of *Incres Steamship Co., Ltd.* v. *IMWU,* 372 U.S. 24, held the preemption doctrine inapplicable to a state court injunction against picketing by an American seamen's union "for the primary purpose of organizing foreign seamen on foreign flagships." 372 U.S., at 25. The picketing had induced foreign seamen to strike the vessel during the course of its voyage, in violation of their shipping articles.

B. The *Benz-Sociedad Nacional-Incres* Rule Has No Application to Labor Disputes In American Ports Involving Longshore, as Distinct from Maritime, Operations.

1. Longshore Work Does Not Involve the Ship's "Maritime Operations" or "Internal Affairs".

This Court has been precise in confining the area in which the Labor Board lacks jurisdiction to disputes involving the "maritime operations" or "internal affairs" of foreign flag vessels. Thus the critical portion of the *Benz* opinion refers to "labor disputes between nationals of other countries *operating ships* under foreign laws" (emphasis supplied). 353 U.S., at 143. And the holding of *Sociedad* is expressed in terms of the "maritime operations" of foreign flagships employing alien seamen. 372 U.S., at 13.

It is impossible to read these opinions without concluding that they rest upon the unique relationship between the vessel and its crew in the operation of the ship, the traditional seaman's craft. The key concept of "maritime operations" means the manning of the ship as it plies the seas from port to port. And the terms "internal discipline" and "internal affairs" likewise refer to the seagoing, shipboard relationship between master and crew.

This does not mean that a ship does not have "maritime operations" or "internal discipline" while in port. But it does establish readily discernible functional limitations on the crucial concept which lies at the root of the decisions relied upon below.

And while it is conceivable that there may be some job operations which approach the dividing line between longshore and maritime work—the handling of ship's lines in docking or undocking, or the removal and replacement of hatch covers preparatory to the loading or discharge of cargo or immediately upon its completion—these are no dif-

ferent from the usual factual issues that arise at the dividing line between any two disparate legal categories. Suffice it to say, no such issues arises in this case, for here the dispute relates to work which forms the very core of longshore operations, the loading of cargo, automobiles, baggage and ship's stores from dock to vessel.[5]

Unlike seamen, whose work is performed aboard ship and primarily away from port, the longshoremen's labor is performed exclusively in port and on the dock as well as on the ship. Its very essence is the transporting of physical materials from the dock to the ship and *vice versa*. To use the language of *Benz*, the longshoreman is never engaged in "operating ships". His short-term, irregular and casual relationship with the vessel does not involve the "internal discipline" of the ship as that term has evolved in the special *sui generis* body of law devoted to the relationship of ship's master and crew.

In short, the work of the longshoreman is functionally distinct from that of the sailor, and decisions expressly fashioned for one group because of its particular functional or relational characteristics have no applicability to the other.

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[5] In a case presenting a substantial factual issue as to whether the work related to maritime or longshore operations, we would urge that the decision must be made in the first instance by the Labor Board, and not by local courts. Any other result would permit local tribunals to circumvent Board jurisdiction by appropriate fashioning of factual findings. Compare *National Marine Engineers Ass'n* v. *Interlake Steamship Co.*, 370 U.S. 173, holding that the threshold jurisdictional question of supervisory status is for the Board to determine.

2. Labor Board Jurisdiction Over the American Longshore Operations of Foreign Flag Vessels Has No Extraterritorial Effect.

One of the principal objections to Board jurisdiction over foreign seamen's disputes was its broad extraterritorial effect. A Board representation certification, for example, would have applied throughout the world wherever the ship might sail, wherever its bargaining might be conducted, wherever its crew might be called upon to work. No matter how frequently a ship might call at American ports, the major portion of its time would be consumed on the high seas or in foreign ports, beyond American territorial waters. Thus if the Act were construed to apply to the labor disputes between foreign vessel and foreign crew, then the reach of American administrative regulation would extend not only to the high seas, or casual world-wide ports of call, but even to the ports of the flag nation itself. Absent specific evidence of legislative intent, the Court was unwilling to attribute such a sweeping reach to the provisions of the NLRA.

Confirmation of Board jurisdiction over the American longshore labor disputes of foreign shipowners, on the other hand, has no extraterritorial effect. Longshoremen do not go to sea or work beyond American territorial jurisdiction. Petitioner is concerned about the longshore wages and conditions in American ports. "Area standards" picketing is limited, in the nature of the case, to work performed in the same area in which the American picketing union has established its contract standards. We are urging here simply the application of the national labor law to longshore labor disputes in American ports irrespective of the ship's registry; we are not urging the extension of Labor Board jurisdiction to longshore disputes in non-American ports.

3. Labor Board Jurisdiction Herein Would Not Conflict With the Labor Laws or Administrative Regulations of the Flag Nation.

Another principal consideration underlying *Benz, Sociedad Nacional,* and *Incres* was the inevitable collision between Labor Board jurisdiction and the laws of the nation of registry. In *Sociedad Nacional,* for example, a Honduran seamen's union had long been certified by Honduran authorities as crew's exclusive bargaining agent. Certification of any other union by the NLRB would have led to irreconcilable conflict. Moreover, an American union, under Honduran law, would be ineligible to represent Honduran seamen aboard Honduran ships. Again the two systems of regulation would have collided. Given the respect normally accorded the law of the flag, the delicacy of the international problems, the very real danger of retaliation, and the usual preference for a legislative construction in accordance with the law of nations, the Court declined to sanction a conflict with the laws and regulations of other maritime powers.

No such considerations exist here. No foreign law governs the performance of longshore work in American ports. Labor Board jurisdiction could not lead to the displacement of a foreign crew or foreign bargaining representative by an American crew or American union. It could not invite retaliation, since every foreign nation, including the nation of registry, would remain free to regulate longshore operations within its own borders. With no risk of collision, the labor laws of the several nations at which a vessel might call would continue to co-exist, as they have in the past. Seagoing labor relations or "maritime operations" would be governed by the law of the flag and longshore labor relations by the law of the nation having territorial jurisdiction.

4. Labor Board Jurisdiction Would Not Conflict With International Treaties.

The United States has bi-lateral treaties with many maritime nations confirming the flag status of vessels registered respectively by each of the contracting parties. In many instances these treaties also preserve the flag nation's jurisdiction over the internal discipline and affairs of its registered ships. In *Sociedad Nacional*, the Court adverted to these treaties as an additional reason why international complications would result from Labor Board jurisdiction over foreign maritime operations.

Because longshore work is performed exclusively in port, off the ship as well as on the ship, and usually by local employees, a labor dispute over wage rates for longshore work in American ports cannot be considered part of the internal discipline or internal affairs of a vessel and has not historically been so regarded. Thus Labor Board jurisdiction over such disputes does not imperil treaty commitments or derogate from the sovereignty of the flag of registry. The very fact that the Labor Board has consistently exercised both representation and unfair labor practice jurisdiction over longshore labor relations of foreign flag vessels (*infra*, pp. 28-30) without protest from any foreign government is ample practical evidence of this.

5. Labor Board Jurisdiction Herein Would Not Stimulate Foreign Vessels to Transfer Their Registry From Nations Now Sympathetic to Possible United States Emergency Needs.

In *Sociedad Nacional* and *Incres*, the Department of Justice, in opposing Labor Board jurisdiction, conveyed to the Court the fears of the Department of Defense that a decision upholding such jurisdiction might impel foreign flag vessels to transfer their registry, to the detriment of

the United States' defense posture. The large number of American-controlled vessels registered under "flags of convenience" in such countries as Panama, Liberia, and Honduras, were felt to be subject to United States Government call in the event of national emergency.[6] The Defense Department feared that if foreign crews were to become subject to American labor contracts, then a major motive for "flags of convenience" would disappear, and the vessels might then be transferred to the registry of other maritime nations under arrangements which would not only insulate them from American labor standards but would also eliminate their ready availability to this country in time of emergency.

This consideration, too, has no applicability to longshore disputes in American ports. For these disputes do not involve either the potential displacement of a foreign crew or the inclusion of foreign seamen within the collective agreements of American maritime unions. The minimal effect of paying American longshore rates for American longshore work does not have the far-reaching consequences expressed to this Court in *Sociedad Nacional*, any more than does the payment of the going price for ship's supplies purchased in this country.

6. The "Law of the Flag" Has No Application to the Regulation of Longshore Labor Disputes Exclusively Within the Territory of Another Nation.

Whatever vitality the law of the flag may have for the regulation of "the internal order and discipline of the ves-

[6] See, United States Department of Commerce, Maritime Administration, "Oceangoing Foreign Flag Merchant Type Ships of 1,000 Gross Tons and Over Owned by United States Parent Companies, as of December 31, 1968," Report No. Mar. 560-22, and United States Department of Commerce, Maritime Administration, "An Analysis of the Ships Under 'Effective U.S. Control' and Their Employment in U.S. Foreign Trade During 1960" (Marit. Adm. Office of Ship Statistics 1962).

sel and her 'occupants'" (Colombos, *International Law of the Sea*, (6th Ed. 1967), p. 324), it is plain that the loading and unloading of ships falls without its ambit.

The law of the flag represents a narrow exception to general principles of jurisdiction. It is not a Constitutional restriction, but a rule of construction in interpreting legislation, and a self-imposed limitation in developing judge-made law. Constitutionally, the United States retains total jurisdiction over all persons and things within its territorial boundaries, including foreign merchant ships coming into American ports for purposes of trade. As the Court held in *Cunard SS. Co.* v. *Mellon*, 262 U. S. 124:

> "A merchant ship of one country voluntarily entering the territorial limits of another, subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence just as with other objects within these limits."

To the same effect, see *Marine Cooks & Stewards* v. *Panama Steamship Co., Ltd.*, 362 U. S. 365; *United States* v. *Diekelman*, 92 U. S. 520; *The Belgenland*, 114 U. S. 355; *Wilderhus' Case*, 120 U. S. 1; *Uravic* v. *Jarka Co.*, 282 U. S. 234.

The law of the flag developed as a pragmatic expedient, necessitated by the continuing movement of ships from one territorial jurisdiction to another. Inasmuch as the ship maintained certain continuing relationships throughout the voyage, it would be impractical and disruptive if the rights and duties springing from these relationships were to vary with the laws of a particular port of call. As the Court observed in *Lauritzen* v. *Larsen*, 345 U. S. 571, 581:

> "The virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If to serve some immediate interest, the

courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea."

The purpose of the rule demonstrates its limitation. Where a transaction or relationship is not "internal" to the ship, but involves substantial shore-based contacts, then the territorial jurisdiction must assert itself. Thus, for example, if shipboard events "involve the peace and dignity of the country or the tranquility of the port" then the law of the flag gives way. *Wilderhus' Case*, 120 U. S. 1, 11; *The Exchange*, 7 Cranch 116, 144; *Patterson* v. *The Endora*, 190 U. S. 169. Particularly is this so when the transaction is transitory and does not encompass relationships, standards of conduct, rights or duties that continue to affect the vessel on its voyage from port to port.

This is the case with longshore operations and longshore labor disputes. The work is as intimately connected with the shore as with the ship, and it continues, so far as the ship is concerned, only while the ship remains in port. Hence there is no risk that differing local laws will be applied to the same relationship or transaction. The pragmatic justification for legislative abstention from usual regulatory coverage simply does not exist.

Unlike the seaman who derives his protection and benefits from the law of the flag, the longshoreman would be remediless were the American territorial jurisdiction to be denied. While foreign safety, social welfare and other employee benefit laws may protect the seaman aboard a foreign flag vessel, they do not extend to American longshore operations.[7]

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[7] In *Empresa Hondurena de Vapores, S.A.* v. *McLeod*, 300 F.2d 222 (2d Cir.), *affd.* sub nom. *McCulloch* v. *Sociedad Nacional de*

For these reasons both courts and legislatures have long recognized the basic distinction between seamen and longshoremen in determining the scope of the law of the flag. In *Uravic* v. *Jarka Co.*, 282 U.S. 234, a unanimous Court sustained a longshoreman's right of suit under the Jones Act (46 U.S.C. §688) for injuries incurred aboard a foreign vessel in an American port. In *Romero* v. *International Operating Co.*, 358 U.S. 354, on the other hand, a foreign seaman injured aboard a foreign flag vessel in New York harbor was denied recovery under the very same Act and was relegated to his rights under the laws of the flag nation.

Similarly, foreign shipping lines are compelled to cover their longshore employees in American ports under federal social welfare legislation. For example, longshoremen working foreign flag ships are entitled to the benefits of the Fair Labor Standards Act (29 U.S.C. §§ 201-219), *McCarthy* v. *Wright & Cobb*, 163 F. 2d 92 (2d Cir.); *Knudson* v. *Lee & Simmons, Inc.*, 163 F. 2d 95 (2d Cir.); Department of Labor, Wage and Hour Division, "Interpretive Bulletin", Part 783, C. F. R.; while seamen on the very same foreign vessels are expressly excluded. 29 U. S. C. § 213(a)(14). Similarly, longshoremen working "within the United States" on foreign flag vessels are covered by the Federal Old-Age, Survivors and Disability Insurance Benefits provisions of the Social Security Act. 42 U.S.C. § 410(a) (A) (i). Foreign seamen, working on the same foreign flag vessels, are specifically excluded from coverage. 42 U.S.C. § 410(a) (B) (4).

Marineros de Honduras, 372 U.S. 10, Judge Friendly observed that even if the NLRA were accorded the broadest sweep, it would not apply to longshore operations on Empresa ships in Honduran ports. On the same principle of territorial limitation, foreign laws, both labor and social welfare, do not apply to longshore operations in American ports.

As we shall show below (infra pp. 28-30), the same principle has been consistently observed in the application of the National Labor Relations Act.

7. The Fact That a Portion of Respondents' American Longshore Work Is Performed by Members of the Crew Does Not Deprive the Labor Board of Jurisdiction.

The longshore work for respondents' vessels, while in Florida ports, is accomplished partly by the ship's crew and partly by local residents hired for the occasion (A. 45a). The fact that American residents perform at least a portion of the work which occasioned the picketing simply confirms the Labor Board's exclusive jurisdiction, although the result would be the same even if this were not the case.

The record does not disclose the relative numbers of American and foreign workers or the way in which they combined to service the vessel's longshore needs. But this is not, in any event, an issue for a state court to explore. Even if it be assumed *arguendo* that seamen doing longshore work are excluded from NLRA coverage, their combination with American residents creates an issue for Labor Board determination. In order to effectuate the policies of the NLRA, in a single dispute involving some employees arguably subject to the Act and some arguably excluded, the Board must be given the opportunity to make the initial decision. For only the Board is statutorily qualified to evaluate the respective roles of the two groups of employees, to assess the weight to be given the particular factual pattern of combination, and to determine the legal significance of the facts found. Cf. *National Marine Engineers Ass'n.* v. *Interlake Steamship Co.*, 370 U. S. 173.

But even if the evidence were quite different and all of respondents' American longshore work were performed by

members of the ship's crew, the Labor Board would still have exclusive jurisdiction.[8] For seamen performing longshore labor must be distinguished from seamen performing seamen's work. Otherwise the purpose of the national Act would be readily and fundamentally thwarted in an industry crucial to American foreign commerce.

As indicated above, this Court has narrowly limited the area in which the Labor Board lacks jurisdiction to the vessel's "maritime operations", that is the work of men engaged in "operating ships". *Sociedad Nacional, supra; Benz* v. *Compania Naviera Hidalgo, supra.* If, however, the same individuals who comprise the ship's crew cast aside their seaman's role and undertake the tasks of another distinct, established trade—tasks, moreover, necessarily performed on dock as well as aboard ship—then the immunity from Board jurisdiction ceases. For then the interest of the territorial jurisdiction in assuring the resolution of labor disputes in accordance with its own laws emerges irresistibly, and the interest of the flag nation in maintaining its authority disappears. No nation can extend immunity from its regulatory legislation to seamen who are no longer acting as such but are doing shore-oriented work which necessarily affects the labor relations and labor tranquility of the port.

The longshoreman, it must be recalled, is not an American industrial creation. Longshoremen form a recognized trade or craft in all maritime nations throughout the world. International conventions, and reports by such world bodies

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[8] The Florida District Court of Appeal did not rest its decision upon the fact that crew members were performing a portion of the protested work. Indeed, that Court apparently viewed the picketing as a protest against the employment of "American residents" at substandard longshore rates (A. 52a). Nevertheless, on the sole ground that the employer was a foreign shipowner, the defense of exclusive Labor Board jurisdiction was rejected.

as the International Labour Office, are regularly devoted to longshore work and the longshore industry.[9] The distinction between seamen's work and longshore work is well known everywhere.

If foreign seamen could perform longshore work without coming under Labor Board jurisdiction, then they could move miles inland to obtain and transport ships supplies, and in so doing perform with equal impunity the work of a warehouseman, retail clerk, butcher, teamster, and perhaps a score of other trades. Presumably the shipowner could have the ship's repair work also done by crew members while the vessel lies in an American port. Indeed, during a lengthy stay, he might even assign to them other industrial shoreside tasks, so as to obtain the maximum economic benefit from their services while the ship is idle. The width of the swath which would thus be cut through traditional labor jurisdiction would be limited only by the resources and ingenuity of the foreign shipowner. And the inevitable threat—indeed the virtual certainty—of labor strife is too plain for argument.

Given an Act expressly designed to regulate activities which lead to "industrial strife or unrest" having the "effect of burdening or obstructing commerce" (29 U.S.C. § 151), it would be unthinkable for the national labor law not to apply in such circumstances. Nothing in the decisions of this Court, or the language, purpose or history of the Act, leads to any such mischievous and self-defeating a result.

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[9] *E.g., The International Labour Code, 1951* (ILO 1952), "The Protection Against Accidents of Workers Employed in Loading or Unloading Ships," Articles 587-609. Longshoremen are there referred to as "dockers". See, also, Dawson, "The Stabilisation of Dock Workers' Earnings" 63 *International Labour Review* 241-265.

C. The Labor Board, With Judicial Approval, Has Consistently Taken Jurisdiction Over the Longshore Labor Disputes of Foreign Flag Vessels.

Both before and after the decisions in *Benz, Sociedad Nacional* and *Incres*, the National Labor Relations Board has assumed jurisdiction over the American longshore operations of foreign flag vessels, both as to representation elections and unfair labor practice charges.

When establishing a port-wide appropriate bargaining unit, the NLRB has set a single unit for the longshore employees of all shipping companies, foreign and domestic alike. The presently effective NLRB certification for longshoremen in the Port of New York is set forth in *New York Shipping Association, Inc.*, 116 NLRB 1183. Among the employers included in that single Port-wide bargaining unit are such well-known foreign flag lines as Argentine State Line, Belgian Line, Inc., Chilean Line, The Cunard Steamship Company, Ltd., French Line, Hellenic Lines, Ltd., Holland-American Line, Italian Line, and Royal Netherlands Steamship Company (116 NLRB, at 1189-1190). Other representation proceedings involving pierside operations of foreign flag lines are *Compagnie Generale Transatlantique (French Line)*, 117 NLRB 535 and *Italia Societa per Azione di Navigazione (Italian Line)*, 118 NLRB 1113.[10]

The Labor Board has also consistently taken jurisdiction over unfair labor practice charges involving longshore op-

[10] Although many shipping companies have their American longshore operations performed by stevedoring contractors, some companies, including foreign flag lines, employ longshoremen, checkers, tally clerks, and similar workers directly, and they have always heretofore been considered subject to NLRB jurisdiction. The record herein does not show whether or not respondent operated through a local stevedore, but this, we urge, is immaterial, since NLRB jurisdiction applies in either event.

erations on foreign flag vessels, and those Courts of Appeal called upon to review Board action have uniformly confirmed the Board's jurisdiction. E.g. *Local 1355, ILA (Maryland Ship Ceiling Co.)*, 146 NLRB 723, *enf. den'd*, 332 F. 2d 992 (4th Cir.); *Cunard Steamship Co., Ltd.* Case Nos. 4-CA-1787, 1788, 4-CB-482, 4-CA-2229-1-2-3, 1961 CCH NLRB Decisions ¶10,813; *Madden* v. *Grain Elevator Workers Local 418*, 334 F. 2d 1014 (7th Cir.), *cert. den'd*, 379 U.S. 967; *Grain Elevator Workers Local 418* v. *NLRB*, 376 F. 2d 774 (D. C. Cir.), *cert. den'd*, 389 U.S. 932.

In one of the two consolidated cases decided by the Court *sub nom Sociedad Nacional, supra*, the Second Circuit, at the instance of the Honduran shipowner, had enjoined the Board-ordered representation election. *Empresa Hondurena de Vapores, S.A.* v. *McLeod*, 300 F. 2d 222 (2d Cir.). Holding the Act and its procedure inapplicable to seamen, Judge Friendly noted the crucial distinction between longshoremen and sailors:

> "The problem of workers directly engaged in transportation is more difficult; the stevedores stay on the piers, the miners remain in the mines, but the seamen come to the United States and return."

The jurisdictional question was squarely raised in *NLRB* v. *Longshoremen's Local 1355, supra*, 332 F. 2d 992. Although the Board's order was denied enforcement on the merits, its jurisdiction over foreign vessel longshore disputes was upheld. Said the Fourth Circuit, in language directly in point herein:

> "The union has argued that the Board lacks jurisdiction over the subject matter. It is said first that because the "Tulse Hill" is a foreign-flag vessel manned by an alien crew and because her owner, Ocean, seeks to

invoke the Board's aid, this controversy is not one "affecting commerce" within the meaning of the Act. We do not accept this broad proposition. In *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963); *Incres S.S. Co.* v. *International Maritime Workers*, 372 U.S. 24 (1963); and *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957), the cases relied upon for this purpose by ILA, the Supreme Court declared the Board without jurisdiction over labor relations between owners of foreign-flag vessels and their foreign crews. These cases all relate to shipboard labor relations, something very different from the present case."

D. Denial of Board Jurisdiction Over the Longshore Operations of Foreign Flag Ships Would Have Far-Reaching Disruptive Effects Upon Longshore Labor Relations.

Since the organization of American longshoremen into unions over fifty years ago, labor relations in the longshore industry have never depended upon the registry of the vessel. The same collective bargaining agreement covers all American longshore operations on both foreign and domestic ships. The employer associations which conduct longshore labor relations in this country (see *United States* v. *ILA, et al.*, 293 F.Supp. 97, 98)[11] consist of both foreign and domestic lines. The same longshoreman may work one day for a domestic line and the next day for a foreign line. His pension, welfare and vacation eligibility credits are accumulated through work under the collective bargaining agreement on behalf of ships flying the flags of all nations.

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[11] See also *United States* v. *ILA, et al.*, 116 F.Supp. 255, 259 (S.D.N.Y.); *United States* v. *ILA, et al.*, 147 F.Supp. 425 (S.D. N.Y.); *United States* v. *ILA, et al.*, 246 F.Supp. 849 (S.D.N.Y.).

Indeed, the great bulk of American foreign commerce—now over 94%[12]—is carried in foreign bottoms and the bulk of longshore work is performed on foreign ships.

Because of the difficulty in providing economic security for a work force in an essentially casual industry with little continuity of employment, longshore labor relations are difficult enough without added complications. Yet stable relations in this industry are crucial to the national economy, as is evidenced by the fact that the longshore industry has been subject to more "national emergency" injunctions under the Taft-Hartley Act than any other industry in the nation.[13]

The holding of the Florida courts would, in effect, bifurcate labor relations in this complex, sensitive branch of the economy. A portion of an industry which has traditionally been treated as an entity would be governed by the federal labor law with its single, authoritative, expert tribunal. Another portion—the major portion at that—would be subject to the laws of the various states and their respective tribunals.

The effects of this would work both ways. To take but a single recent example, a national longshore strike early in 1969 was ended through temporary injunctions obtained by the Labor Board against alleged union unfair labor practices in certain leading ports.[14] If the Board had lacked jurisdiction over foreign flag longshore operations, the con-

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[12] *The New York Times,* October 12, 1969, p. 1, col. 7; United States Department of Comemrce, Maritime Administration, "An Analysis of the Ships under 'Effective U.S. Control' and Their Employment in U.S. Foreign Trade During 1960," Table 2.

[13] See United States Dept. of Labor, Bureau of Labor Statistics, "National Emergency Disputes under the Labor Management Relations (Taft-Hartley) Act, 1947-62," BLS Report No. 169; and cases in footnote 11, *supra.*

[14] *Danielson* v. *ILA,* 59 CCH Labor Cases ¶13,261 (S.D.N.Y.).

sequences might have been entirely different. And it is undoubtedly because of their desire to obtain the benefits of the uniform federal law that foreign flag lines have not sought to escape the coverage of the NLRA.

In other instances, under the rationale below, the union, as charging party, would be deprived of the benefits of NLRB unfair labor practice jurisdiction or would be unable to avail itself of the Board's representation procedures. And in lawsuits instituted in state courts, such as the case at bar, longshoremen and their union would be deprived of the protection of federal law and the uniform application of that law by the prescribed federal agency. It was precisely to avoid such results that a single uniform federal act was adopted by Congress.

II.

In the Absence of Any Evidence, Finding or Judicial Articulation of an Illegal Objective, Prohibition of Peaceful Picketing to Publicize Substandard Wages Deprives the Union of Freedom of Speech.

"We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment." *Amalgamated Food Employees* v. *Logan Valley Plaza*, 391 U.S. 308, 313. The Court there summarized those cases upholding State prohibition of peaceful picketing as having "involved picketing that was found either to have been directed at an illegal end [citing cases] . . . or to have been directed to coercing a decision by an employer which, although itself legal, could validly be required by the State to be left to the employer's free choice." 391 U.S. at 314.

That the picketing herein was peaceful is undisputed. There is no claim, no evidence, and no finding of any physical impediment, actual or threatened, to the free passage of persons or materials.

Nor is there any claim, evidence, finding or other judicial explication of any illegal objective or purpose to petitioner's area standards picketing. Indeed, although this Court has held that the validity of a State's proscription of a particular union objective remains open to federal judicial scrutiny, here the question of validity need not and cannot be reached, for no state court has indicated what objectionable purpose existed or what state policy or law the picketing offended.

The sole witness, the union's president, testified that the picket signs publicized the payment of substandard wages for longshore work. There was no evidence, and no finding by any state court, that the picketing had secondary objectives or effects, or that it was designed to coerce either the employees in their choice of representative or the employer in his selection of employees. Nor was any other potentially prohibitable purpose brought out either at the hearing or in any judicial opinion.

The decisions of this Court make abundantly clear that such a record is wholly insufficient to sustain an injunction against peaceful picketing.

In *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, the state policy against antitrade restraint was expressed in statutory form, and the state court had found the picketing to be "an essential and inescapable part of a course of conduct" in violation of that statute. 336 U.S. at 491. Similarly in *Carpenters Local 213* v. *Ritter's Cafe*, 315 U.S. 722, the picketing offended the secondary boycott ban embodied in the state's antitrust laws, and this Court, after reviewing the evidence and findings, affirmed.

Although a state may proscribe particular picketing objectives through judicial as well as legislative action, *Hughes* v. *Superior Court*, 339 U.S. 460, this Court has insisted that the state court explicate the policy deemed to control the case, so that its applicability to the facts in the record and its validity as a basis for abridging communication can be federally reviewed. Any other course would have left precious federal Constitutional rights to the mercy of a potentially hostile tribunal and stripped this Court of its power to protect against arbitrary, unjustified abridgement.

Thus in *Teamsters Local 309* v. *Hanke*, 339 U.S. 470, the Court carefully examined the applicable state policy against compelling self-employer unionization and measured it against the Constitutional protection due picketing. Said the Court: "[W]e cannot conclude that Washington, in holding the picketing in this case to be for an unlawful object, has struck a balance so inconsistent with rooted traditions of a free people that it must be found an unconstitutional choice" 339 at 478-479. However, the Court stressed that "a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." In order to permit effective, meaningful review of the validity of the state's prohibition of particular union objectives, the Court emphasized that the state must "declare" its policy so that there would be a "defined unlawful object" 339 U.S. at 479-480. Similarly in *Building Service Employees, Local 262* v. *Gazzam*, 339 U.S. 532, 538, the Court noted that the state's policy against the proscribed purpose had been clearly "enunciated" and "declared", both by statute and in the opinion of the state court.

Just as *Hanke* and *Gazzam* stand for the proposition that the state must articulate and define its policy proscribing a particular union objective, so *Local 10, Plumbers Union* v. *Graham*, 345 U.S. 192 stands for the correlative proposition that the evidence in the record must support the conclusion that the picketing was in fact directed at the prohibited purpose. Said the Court (345 U.S. at 197):

> "In a case of this kind, we are justified in searching the record to determine whether the crucial finding by the state courts had a reasonable basis in the evidence."

The *Graham* opinion (345 U.S. at 197, footnote 4) quoted approvingly from *Drivers Union* v. *Meadowmoor Dairies*, 312 U.S. 287, 293, 294, also a picketing case, as follows:

> ". . . it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. . . ."

In *Teamsters, Local 695* v. *Vogt, Inc.*, 354 U.S. 284, 294-295, the Court cautioned:

> "Of course, the mere fact that there is 'picketing' does not automatically justify its restraint without an investigation into its conduct and purposes. State courts, no more than state legislatures, can enact blanket prohibitions against picketing."

Measured against these standards, the record herein is totally inadequate to sustain the injunction. The trial court made no factual findings and nowhere defined or enunciated any state policy which would warrant prohibition of

petitioner's peaceful picketing. The unexplained conclusion accompanying both the oral and written temporary restraining orders, that the union's acts "are in violation of Florida law" (A. 16a; 46a) is patently insufficient. The purport of the "Florida law" remains wholly unexpressed and undefined, as does the supposedly offending union objective.

It should not be necessary—and under this Court's decisions it is not—for a union at the ultimate stage of litigation to have to guess at the basis for a state court injunction against peaceful picketing. Yet even if we indulge in this type of speculation, it is still apparent that the decisions below cannot pass Constitutional muster.

The only evidence in the record tends to show that the purpose of the picketing was precisely what appeared from the face of the signs themselves: to inform the public, and particularly the ship's passengers, or potential passengers, of the payment of substandard wage rates for longshore work. Indeed, this was apparently the view of plaintiff's attorneys who complained that "inducing customers to cease doing business with the plaintiffs, that is illegal—was illegal. And that is what we are asking this Court to enjoin" (A. 42a-43a). The fourth decretal provision of the injunction prohibiting picketing or handbilling to induce customers and potential customers to cease patronizing respondents' cruises indicates that the court regarded this as the gravamen of the wrong.

We need not belabor the point that discouraging consumer patronage of a business by reason of its disfavored labor policy is the classic objective of Constitutionally protected peaceful picketing. This was the precise objective of the picketing unions in the leading cases invalidating state injunctions on free speech grounds, from *Thornhill* v. *Alabama*, 310 U.S. 88 to *Logan Valley, supra*, 391 U.S. 308.

There are indications in the opinion below that the District Court of Appeal believed "that no real dispute over wages really existed" (A. 53a) because "none of the members in the appellant labor union are employed to perform any work in connection with the operation of the cruise ships involved herein" (A. 50a) and "therefore, publicizing accusations as to that grievance was also forbidden" (A. 53a). Compare *Hotel Employees Union* v. *Sax Enterprises*, 358 U.S. 270, reversing on preemption grounds a Florida injunction against stranger organizational picketing. It was just this type of state policy proscribing "picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute", which the Court condemned in *Teamsters Local 309* v. *Hanke, supra*, 339 U.S. 470.

A union is entitled to seek to eliminate substandard wages in the industry in which its members work, whether or not it represents the employees in a particular industrial establishment. *American Federation of Musicians* v. *Carroll*, 391 U.S. 99, 106; *Mine Workers* v. *Pennington*, 381 U.S. 657, 666. Thus its Constitutional rights to discourage customers' patronage subsist even though it does not represent the employees currently performing the employer's work. *Amalgamated Food Employees Local 590* v. *Logan Valley Plaza, supra*, 391 U.S. 308; *Bakery Drivers Local 802* v. *Wohl*, 315 U.S. 769; *AFL* v. *Swing*, 312 U.S. 321. As the Court held in *Logan Valley*, 391 U.S. at 315:

> "[P]icketing of a business enterprise cannot be prohibited on the *sole* ground that it is conducted by persons not employees whose purpose is to discourage patronage of the business."

Finally, a state court may not avoid the force of the constitutional protection merely by saying, or even finding, that

the picketing did not constitute a "labor dispute". There is no talismanic magic to this type of characterization. *Bakery Drivers Local 802* v. *Wohl, supra.*

That peaceful picketing is "free speech plus" does not deprive it of First Amendment protection "absent other factors involving the purpose or manner." *Logan Valley, supra,* 391 U.S. at 313. Here no such factors appear, and the picketing, therefore, falls squarely within the protected domain as defined by this Court.

CONCLUSION

For all the reasons stated, the judgment should be reversed and the case remanded with directions to modify the injunction so as to delete the three unnumbered decretal paragraphs and the injunctive paragraphs numbered "3" and "4" (A. 15a-16a).

November, 1969

Respectfully submitted,

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APPENDIX

Constitutional and Statutory Provisions Involved

United States Constitution, Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

National Labor Relations Act,
Sec. 7. (29 U.S.C. Sec. 157)

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain col-

lectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(b) (1), (2), (4) and (7) (29 U.S.C. Section 158 (b) (1), (2), (4) and (7))

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or

in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor

organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act:

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

* * * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bar-

gain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Constitutional and Statutory Provisions Involved

Section 9(a) and (b) 29 U.S.C. Sec. 159(a) and (b))

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect . . .

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to

protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO, PETITIONER

v.

ARIADNE SHIPPING COMPANY, LIMITED, AND EVANGELINE STEAMSHIP COMPANY, S.A.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD CIRCUIT, STATE OF FLORIDA

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

The first question presented in this case (Pet. Br. 2), in which certiorari was granted on October 13, 1969, is "Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port." The answer turns upon whether the conduct involved is "arguably subject" to the National Labor Relations Act; if it is, the subject of the suit is preempted.

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236, 245. The state courts held that there was no preemption, on the authority of *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 and *Incres Steamship Company* v. *International Maritime Workers Union*, 372 U.S. 24, which held that the Act is not applicable to labor disputes concerning the maritime relations of foreign-flag vessels with their alien crews. The question whether those holdings extend to longshore operations in American ports involves the Board's jurisdiction over an important area of labor relations. For the reasons given below, we believe that *Sociedad* and *Incres* are not controlling and that this conduct, unlike that involved in those cases, is subject to the National Labor Relations Act and hence that the state courts are without jurisdiction to regulate it.

STATEMENT

Respondents Ariadne Shipping Company, Limited, a Liberian corporation, and Evangeline Steamship Company, S.A., a Panamanian corporation, are engaged in the operation of cruise ships which transport passengers from Port Everglades and Miami, Florida, to various points in the West Indies and Carribbean. The two ships employed for these cruises are the *S.S. Ariadne*, a Liberian-flag vessel, and the *S.S. Bahama Star*, which is of Panamanian registry. Both ships have crews of foreign seamen. (A. 3a–5a.)[1] The loading and unloading of baggage,

[1] "A." references are to the portions of the record printed in the Appendix.

cars, supplies, and other cargo carried aboard the ships, however, is performed in part by American residents (A. 28a, 39a, 44a–45a). Petitioner International Longshoremen's Association, Local 1416, AFL–CIO, is a labor organization representing longshoremen in the Miami, Florida, area (A. 4a).

In early May 1966, the Union established picket lines on the public docks of Miami and Port Everglades adjacent to the berths where the *Ariadne* and *Bahama Star* were docked. The pickets carried signs and placards and distributed handbills alleging that (1) the nonunion longshoremen who were employed to load and unload the ships were paid substandard wages, and (2) the ships were unsafe. This initial picketing was directed not at the ships themselves, but at Eastern Steamship Lines, Inc. (Eastern), a Florida corporation which performs a variety of services as respondents' "general agent".[2] On May 20, 1966, Eastern obtained a temporary injunction against the Union's activities from the Circuit Court for Dade County, Florida. See *International Longshoremen's Association, Local 1416, AFL–CIO* v. *Eastern Steamship Lines, Inc.*, 211 So. 2d 858, 859 (Fla. App. 1968), affirming the decision of the Circuit Court. The court, rejecting the Union's contention that state court jurisdiction was preempted by the National Labor

[2] See *Eastern Steamship Lines, Inc.*, 161 NLRB 458, where the Board, in an advisory opinion, found that Eastern met the Board's jurisdictional standards. The Board also found that it was Eastern which hired the stevedores to service the ships. *Id.* at 458–459. See also deposition of Timothy F. Kane, at pp. 28–29, 32–33 of the certified record of this case on file with the clerk.

Relations Board, concluded that the Union's dispute was with the foreign flag vessels themselves, and thus outside the Board's jurisdiction under *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10.

Shortly after entry of the injunction against the picketing of Eastern, the Union commenced to picket respondents' vessels themselves, and the vessel owners brought the present suit in the Circuit Court of Dade County, to enjoin that activity too. Picketing occurred in two locations—near the vessels and in front of the terminal through which passengers embarked and disembarked. The uncontradicted evidence introduced at the state court hearing showed that the picketing near the vessels was to publicize the claim that the work of loading and unloading the ships' cargo—work performed in part by American residents and in part by the ship's crew—was being done under substandard wage conditions (A. 44a–45a, 52a). The pickets displayed their substandard wage signs whenever the vessels docked. In front of the terminal, the Union picketed with signs alleging that the ships were unsafe, and passed out handbills to the same effect (A. 44a).

On May 26, 1966, the Circuit Court again issued a temporary injunction against the Union's picketing. It found that the Board lacked jurisdiction over the Union's activities and that there was no labor dispute; that the state court thus had jurisdiction to enjoin picketing in violation of Florida law; that the picketing did violate state law; and that an injunction would not constitute an infringement of con-

stitutionally protected free speech (A. 46a). The court's order (A. 16a) prohibited:

> 1. Picketing and patrolling, with signs and placards stating, alleging or inferring that Plaintiffs' vessels are unsafe;
>
> 2. Distributing literature, handbills or leaflets stating, alleging or inferring that Plaintiff's vessels are unsafe;
>
> 3. Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between Defendant and Plaintiffs, by any statement, legend or language alleging Plaintiffs pay their employees substandard wages;
>
> 4. By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of Plaintiffs to cease doing business with Plaintiffs.

In this Court, the Union seeks review only of paragraph 3 of the injunction, which was directed at the picketing near the vessels (n. 4, *infra*).

On interlocutory appeal, the District Court of Appeals for the Third District of Florida affirmed the trial court's conclusions as to jurisdiction, citing *McCulloch* v. *Sociedad Nacional, supra,* and *Incres Steamship Company* v. *International Maritime Workers Union,* 372 U.S. 24 (A. 48a). The trial court then entered an order making the injunction permanent (A. 47a). On appeal the District Court of Appeals, except in one respect not relevant here,[3] affirmed

[3] The district court set aside paragraph 4 of the injunction as too broad (A. 53a).

the permanent injunction. The district court ruled that the testimony before the trial court tended to show: "(1) that the union was concerned with safety conditions aboard the two foreign vessels; and (2) that the union was attempting to inform the public that the American residents who were working on the cruise ships were being paid substandard wages" (A. 52a). It held that the injunction was justified although it barred the Union not only from complaining about the safety of the ships (paragraphs 1 and 2, *supra,* p. 5),[4] but also from protesting the substandard wages paid the longshoremen (A. 53a). The Supreme Court of Florida refused to review the district court's judgment (A. 55a).

ARGUMENT

THE STATE COURT LACKED JURISDICTION TO ENJOIN THE UNION'S PICKETING AGAINST THE CONDITIONS UNDER WHICH THE LONGSHORE WORK WAS BEING PERFORMED

In *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 245, this Court held that the jurisdiction of the National Labor Relations Board is exclusive and preemptive as to activities which are "arguably subject" to regulation under Sections 7 or 8 of the National Labor Relations Act. The states are thus prohibited from providing a remedy for disputes over which the Board might assert jurisdiction. In this case, the state court relied on *McCulloch* v. *Sociedad Nacional,* 372 U.S. 10, and *Incres Steamship Company*

[4] With respect to those portions of the injunction, the Union had by that time abandoned its appeal. It is not seeking review of them here (Pet. 4, n. 2).

v. *International Maritime Workers Union,* 372 U.S. 24, to conclude that the activity in question—union picketing in protest over the wages paid nonunion longshoremen engaged in loading and unloading certain foreign vessels—was beyond the reach of the Board's regulatory power; and hence that it could enjoin the picketing as contrary to Florida law. We submit, however, that *Sociedad* and *Incres,* both of which involved the shipboard labor relations of foreign vessels and their foreign crews, are inapplicable in a case involving longshore operations in an American port, performed in part by American residents; that the Board has jurisdiction over such operations even though they may involve a foreign flag ship; and that the state court's order should be vacated for lack of jurisdiction insofar as it enjoins picketing relating thereto.

1. The Union's picketing to protest substandard working conditions would clearly be subject to regulation by the Board if directed at a domestic employer. If such activities were found to be aimed at organizing nonunion employees, or forcing their employer to recognize the picketing union as their bargaining representative, there would be a potential violation of Section 8(b)(7)(C) of the Act (Pet. Br. 42–43), which prohibits organizational or recognitional picketing when continued for more than 30 days without a representation petition having been filed. Moreover, even if the Union's picketing efforts were addressed solely to the public, as distinguished from employees, and were thus within the exception created by the second proviso to that section, there might nevertheless

be a violation of the Act, since the proviso applies only where it is shown that the picketing in question has not interfered with deliveries or otherwise disrupted the employer's business (Pet. Br. 43). Similarly, if the Union's picketing resulted in involving other, neutral employers in the dispute, its objectives might be secondary and thus proscribed by Section 8(b)(4)(B) of the Act. (Pet. Br. 40–41). See *Sailors' Union of the Pacific*, 92 NLRB 547.

On the other hand, if the sole objective of the Union were to protest a failure to conform to area wage standards, then its activities would be proscribed by neither Section 8(b)(7)(C) nor Section 8(b)(4)(B), and presumably would be either protected by Section 7 of the Act (Pet. Br. 39–40), or within the area which Congress intended to leave to the free play of economic forces. *Houston Bldg. & Construction Trades Council* (*Claude Everett Construction Co.*), 136 NLRB 321. As the Court observed in *Garner* v. *Teamsters Union*, 346 U.S. 485, 499–500, the "policy of the National Labor Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing."

2. The question, therefore, is whether the Board is without jurisdiction because the Union's dispute is with a foreign flag vessel rather than a domestic employer. We submit that the Board has jurisdiction over all labor disputes involving longshore work done in an American port by American residents, whether or

not that is performed in connection with a foreign flag vessel. The Board regularly exercises jurisdiction over longshore operations involving foreign ships where the immediate employer of the longshoremen is a domestic stevedoring company rather than the vessel itself. See, *e.g., National Labor Relations Board* v. *International Longshoremen's Association, Local 1355,* 332 F. 2d 992 (C.A. 4) (refusal of union hiring hall to refer work gangs to American employer who had contracted to perform services aboard boycotted foreign ship); *Marine Cooks and Stewards Union* (*Matson Terminals, Inc.*), 156 NLRB 753 (dispute over work assignments of American longshoremen employed by domestic stevedoring company in unloading foreign vessels). Although here the American workers appear to have been hired by Eastern, an American intermediary, the Board would have jurisdiction over domestic longshore operations even if a foreign ship directly hired the American workers who loaded and unloaded their ships. Thus, in *New York Shipping Association,* 116 NLRB 1183, the Board established a single bargaining unit for the longshore employees employed by all the member of the Association, which included such foreign shipping companies as Argentine State Line, Belgian Line, Inc., Chilean Line, and Cunard Steamship Co., and French Line. Similarly, in *International Longshoremen's and Warehousemen's Union, Local 13* (*Princess Cruises Co.*), 161 NLRB 451, the Board asserted jurisdiction under Section 10(k) of the Act, 29 U.S.C. 160(k), to resolve a jurisdictional dispute over the assignment of work similar

to that involved here—loading and unloading baggage on a foreign cruise ship—and awarded that work to American longshoremen who had been hired directly by the foreign shipping company (161 NLRB at 453–454, 457).

3. *McCulloch* v. *Sociedad Nacional* and *Incres Steamship Company* v. *International Maritime Union, supra,* do not undermine the foregoing decisions or foreclose the exercise of Board jurisdiction here. In *Sociedad,* the question was whether the Board could direct a representation election among a group of foreign seamen who were employed on a Honduran flag ship under Honduran shipping articles—whether the Act extended to "maritime operations of foreign-flag ships employing alien seamen" (372 U.S. at 13). In *Incres,* the question was whether the National Labor Relations Act applied to picketing by an American union which was attempting to organize the alien seamen who worked aboard a Liberian vessel under Liberian shipping articles (372 U.S. at 25–26). This Court, citing its earlier decision in *Benz* v. *Compania Naviera Hidalgo,* 353 U.S. 138,[5] answered both questions in the negative. The reasoning underlying these deci-

[5] In *Benz,* the Court held that the Act did not bar state court jurisdiction over a damage action arising from the picketing of a foreign vessel, temporarily in an American port, by an American union acting in support of a strike over the wages and working conditions of the ship's alien crew (353 U.S. at 139–140). The Court noted that the underlying dispute "arose on a foreign vessel" and was "between a foreign employer and a foreign crew operating under an agreement made abroad under the laws of another nation" (*id.* at 142).

sions, however, is inapplicable to the different situation here.

In *Sociedad* and *Incres,* the decision did not turn solely upon the fact that the employers were foreign flag vessels. Rather, it was the identity of the employees and the nature of the labor relations involved—alien seamen, working aboard a foreign ship under foreign shipping articles—which led the Court to construe the Act as not encompassing the labor controversy. In *Socieded,* the Court reasoned that application of the Act "might require that the Board inquire into the internal discipline and order" of the foreign vessel, an activity certain to "raise considerable disturbance not only in the field of maritime law but in our international relations as well" (372 U.S. at 19). Moreover, to permit such Board inquiry would have been contrary to the "well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship" (*id* at 21).

These considerations are largely absent here. The dispute in issue centers around the working conditions of a group of American longshoremen, employed exclusively on the docks of American ports. Although it appears that these longshoremen sometimes work in conjunction with foreign crew members in loading and unloading the foreign ships, there is no evidence that the longshoremen perform any regular crew work or are in any way involved in those internal affairs of the ships which would be governed by foreign

law.[6] In these circumstances, there is no sound basis for holding that the Act does not apply to the Union's dispute over the longshore work here. Otherwise, labor relations in one segment of the American longshore industry would be subject to comprehensive regulation by the Board under federal law, while such relations in another and perhaps the larger portion of the industry, that involving foreign flag ships, would be left to the potentially conflicting laws of the various states. This would result in the very lack of uniformity and the consequent "frustration of national purposes" which the *Garmon* preemption principle seeks to avoid (see 359 U.S. at 244).[7]

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[6] Were the longshore work done entirely by the ship's foreign crew under its contract with the ship, there might be reason for the apprehensions which informed this Court's decisions in *Sociedad* and *Incres*. Any such arrangement would be highly unusual, however, and the question does not arise on the facts of this case. Here, American longshoremen were locally hired to do the longshore work, and the Union was seeking to carry its dispute to them. Were there any risk of improperly involving the ship's crew, that could be accommodated in the first instance by the Board in any proceedings before it. And see n. 7, below.

[7] Insofar as the Union's picketing may have had the additional objective of protesting the labor conditions aboard the ships, this would, at most, have justified an injunction proscribing only that objective (see paragraphs 1 and 2 of the injunction, *supra*, p. 5, which the Union does not challenge here). It would not justify barring the picketing insofar as it was directed at the longshore work (paragraph 3 of the injunction, *supra*, p. 5). See *Youngdahl* v. *Rainfair*, 355 U.S. 131.

CONCLUSION

For these reasons, the judgment of the District Court of Appeal, Third Circuit, State of Florida, should be reversed insofar as it sustains paragraph three of the injunction, and the case should be remanded with directions to vacate that portion of the injunction.

Respectfully submitted.

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October Term, 1969

No. [redacted]231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1416, AFL-CIO

Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

BRIEF OF RESPONDENTS

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No. 213

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1416, AFL-CIO

Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

BRIEF OF RESPONDENTS

QUESTIONS PRESENTED

1. WHETHER THE NATIONAL LABOR RELATIONS ACT PREEMPTS STATE JURISDICTION TO ENJOIN PICKETING BY A LONGSHORE UNION ALLEGEDLY PROTESTING THE PAYMENT OF SUBSTANDARD WAGES TO NON-UNION FOREIGN

SEAMEN WHO LOAD AND UNLOAD PASSENGERS' BAGGAGE AND SHIP'S STORES FROM A FOREIGN FLAG VESSEL IN AN AMERICAN PORT.

2. WHETHER THE ISSUANCE OF AN INJUNCTION AGAINST PICKETING VIOLATES PETITIONER'S RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

STATEMENT OF THE CASE

Respondent (hereinafter referred to as ARIADNE or Foreign Flag Vessel) is a foreign corporation that operates one foreign-registered passenger ship, the S.S. Ariadne. This Foreign Flag Vessel makes regularly scheduled passenger cruises between Miami, Florida, and various West Indies and Caribbean ports twice weekly. (A.3a). (There was a second foreign-registered passenger ship, the S.S. BAHAMA STAR, carrying passengers to foreign ports up to 1968, but it is no longer owned or operated by Respondents. Therefore, the question is moot as to that vessel and that Respondent.)

The ARIADNE is engaged in the business of owning and operating one cruise ship for the transportation of passengers. (A.3a) She carries no cargo whatsoever. The crew of the ARIADNE are non-resident aliens who signed and are covered by Ship's Articles of Liberia. (A.3a). The ship's crew, as part of their duties, loaded and unloaded ship's stores and passenger's baggage. (A.44a-45a). ARIADNE employed no American residents to perform any loading or unloading. Trial counsel for the Union

well knows these facts. It was in response to his cross-examination that T. F. Kane so testified[1] in the companion case,[2] involving the same Union, the same type picketing, and the same counsel for the parties.

The above facts show why the record is void of any evidence of actual longshore work done in regard to the Foreign Flag Vessel, just as the record is void of any evidence of actual hiring of employees to do this non-existent work. Likewise the record does not contain any reference to wage scales or wages leading the District Court of Appeals below to agree with the trial court "that no real dispute over wages really existed."

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[1] In the companion case of *Eastern Steamship Lines, Inc. v. International Longshoremen's Assoc., Local 1416*, 66C-5298, involving the same Union, the same type picketing and the same trial counsel for the parties, testimony was taken under oath on May 20, 1966 before the Honorable Gene Williams, Circuit Judge in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, which was the trial court action from which the Union appealed in the cases in footnote 2.

Q. (By Mr. Gopman) What about the cargo which is loaded or unloaded from your ships?
A. We don't have any cargo.
Q. No cargo at all?
A. No.
Q. On either vessel?
A. Either vessel.
Q. Do you load or ship automobiles?
A. No, sir, not any more. I haven't done that for a long time.
Q. You used to do that?
A. Don't take cars either way.

[2] *International Longshoremen's Assoc., Local 1416 v. Eastern Steamship Lines, Inc.*, 193 So2d 73 (Fla. 3d Dist. 1966) and 211 So2d 858 (Fla. 3d Dist. 1968), where the same District Court of Appeal first affirmed the granting of a temporary injunction and then the granting of a permanent injunction.

Petitioner's whole claim is based on the bald assertion that the Foreign Flag Vessel employed Americans to do longshore work in Florida ports. This is categorically false. The true facts have been pointed out to the trial court, the appellate court and the Florida Supreme Court by the briefs and record. That is why the trial court found "that there is no labor dispute" and why this finding was twice affirmed on appeal (after the temporary injunction and again after the permanent injunction) and not disturbed on certiorari to the Florida Supreme Court. It also explains why the Union had no evidence to the contrary to present to the trial court **between** the granting of the temporary injunction[3] (May, 1966), and the granting of the permanent injunction (May, 1967), a period of twelve months.

The Petitioner first picketed on May 13, 1966, claiming, "Eastern Steamship Co. refuse to maintain adequate safety conditions for passengers and employees." On May 17, 1966, "Eastern" filed a complaint against the Union and on May 20, 1966, a temporary injunction was entered against the Union. A few days later, May 23, 1966, the Union picketed again, using the same signs, only pasteing the ship's name over that of "Eastern" (A.4a). On May 24, 1966, ARIADNE filed a verified complaint against Petitioner-Union (A.3a-8a) to enjoin the Union from picketing ARIADNE with signs reading as follows:

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[3]Affirmed on appeal, *International Longshoremen's Assoc., Local 1416 v. Ariadne Shipping Co., Ltd.*, 195 So2d 238 (Fla. 3d Dist. 1967).

ARIADNE

REFUSE

To Maintain Adequate Safety Conditions

for

Passengers and Employees

International Longshoremen's

Association — Local 1416

Miami, Florida

At the hearing on May 20, 1966, the Petitioner-Union, through its attorney, made it abundantly clear that the Union was concerned with the "safety conditions" aboard the ships. (A.29a-33a). It was at this hearing that ARIADNE first became aware that Petitioner said it also was picketing with signs alleging that the Foreign Flag Vessel paid its employees "substandard wages." (A.28a).

The trial court entered an order enjoining Petitioner from, inter alia, picketing, indicating or inferring that a labor dispute existed between the parties (A.16a), and from inducing ARIADNE'S customers and potential customers to cease doing business with it. (A.16a). The injunction order was entered upon the court's finding that its jurisdiction was not pre-empted by the National Labor Relations Board since the National Labor Relations Act as written had no application to foreign registered vessels employing alien seamen, that there was no labor dispute, and that the Union's acts were illegal under state law. (A.16a).

INTRODUCTION TO ARGUMENT

The thrust of the Union's argument under Point I is that the trial court did not have jurisdiction in this cause. By the abandonment of its argument relating to Paragraphs 1 and 2 of the restraining order (A.16a), the Union has admitted that half of the injunction order (as to safety) was correct. Therefore, Petitioner tacitly admits the court had jurisdiction. With this position we agree, for there can be no doubt that "safety conditions" of the ARIADNE are within the purview of the decisions in **Benz v. Compania Naviera Hidalgo, S.A.**, 353 U.S. 138 (1957), **McCulloch v. Marineros de Honduras**, 372 U.S. 10 (1963), and **Incres SS. Co. v. Maritime Workers Union**, 372 U.S. 24 (1963).

ARGUMENT

POINT I

STATE JURISDICTION TO ENJOIN PICKETING BY A LONGSHORE UNION AGAINST A FOREIGN FLAG VESSEL EMPLOYING ALIEN SEAMEN IS NOT PRE-EMPTED BY THE NATIONAL LABOR RELATIONS ACT.

State court jurisdiction to hear a request for, and to award, an injunction between a foreign flag vessel employing alien seamen and an American longshoremen's union is no longer subject to dispute. The court in **Incres S.S. Co. v. Maritime Workers Union**, supra, pointed out quite succinctly that it was no longer "surely arguable" that such disputes were within the purview of the National Labor Relations Act in light of **McCulloch v. Marineros de Honduras**, supra, and affirmatively stated:

> . . . We held today in Sociedad National that the Act does not apply to foreign registered ships employing alien seaman. **Incres S.S. Co. v. Maritime Workers Union**, supra, at p. 26.

Accordingly, it is no longer subject to dispute whether or not the Board has or will take jurisdiction and the trial court properly disposed of this contention.

A. **The decisions of Benz, McCulloch and Incres.**

In the first of the cases, **Benz v. Compania Naviera Hidalgo, S.A.**, supra, the District Court enjoined the foreign crew and the unions, who acted in their behalf, from picketing the foreign flag ship and subsequently entered an award for damages against the unions. The District Court on the trial for damages found that Respondent had no remedy under the Labor Management Relations Act since that Act:

> 'is concerned solely with the labor relations of **American workers** between **American concerns** and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew.' (Emphasis supplied). **Benz v. Compania Naviera Hidalgo, S.A.**, supra, at p. 141.

This Court, in its decision affirming the cause, held that the prior act (Labor Management Relations Act of 1947) also did not apply to controversies involving damages resulting from the picketing by American unions of foreign flag vessels operated entirely by foreign seamen under foreign articles.

In **McCulloch v. Marineros de Honduras,** supra, the National Labor Relations Board had ordered a representative election among the foreign crew members of a foreign flag vessel upon the petition of an American seamen's union. The foreign vessel sought relief by injunction in the United States District Court which relief was denied. The Court of Appeals reversed, holding that the Act did not apply to the maritime operations in question. This Court, in concurring with the decision of the Court of Appeals held that:

> . . . the jurisdictional provisions of the Act do not extend to the maritime operations of foreign-flag ships employing alien seamen. **McCulloch v. Marineros de Honduras,** supra, at p. 13.

Upon the same reasoning, the Court in **Incres S.S. Co. v. Maritime Workers Union,** supra, upheld the jurisdiction of a state court to enjoin picketing by an American seamen's union against a foreign flag vessel. In upholding the state court's jurisdiction to enjoin the union from such persuasive picketing, the Court stated, at p. 26:

> . . . We held today in Sociedad National that the Act does not apply to foreign-registered ships employing alien seamen.

The similarity of **Benz-McCulloch-Incres** and this case is clear. In each, as here, an American union picketed a foreign flag vessel operated by alien seamen. In each, as here, the union lacked a legitimate interest and was enjoined from pursuing its injurious course of conduct.

The facts show the Union's pretext. The Union used safety signs and handbills as to "Eastern" and when that was enjoined, the same signs with the name "Ariadne" substituted were used. Later when the Union saw it was failing with "safety" it shifted gears and claimed "wages" was the issue. Of course, no members of the Union are employed by the Foreign Flag Vessel nor have they sought such employment. No cargo is carried and hence no longshoring work.

The scheme is clear. Hurt the ship's business and coerce ARIADNE into firing foreign seamen or reducing their wages and hiring Union members to do the work traditionally done by the ship's crew (carrying passengers' luggage up the gangway and taking aboard ship's stores).

Benz-McCulloch-Incres pointedly stated that the Act, as written, did not apply to controversies resulting from the picketing by American unions of a foreign flag vessel operated by foreign seamen under foreign articles. The Act did not deprive the state court of jurisdiction over this cause.

B. **Application of Benz-McCulloch-Incres.**

1) The jurisdiction of the Board is not predicated on shorebased "contracts."

The Court in **McCulloch v. Marineros de Honduras**, supra, considered without limitation the question of whether or not the National Labor Relations Act had **any** application to foreign registered vessels employing

alien seamen. The Court answered that it did not and that for such foreign vessels to be subject to the Board's jurisdiction affirmative action by Congress was required. No such action has been taken in the six years since this holding and surely Congress therefore agreed that the National Labor Relations Act does not and should not apply to foreign flag vessels employing foreign seamen.

In **McCulloch v. Marineros de Honduras,** supra, the Union had advocated that since the foreign vessels were regularly within American waters and, since the foreign owners of the vessels were in turn owned by an American corporation, the Board had jurisdiction. The Court pointed out, however, that such factors bore on the validity of the "balancing of contacts" theory and that such theory was **not a proper basis** upon which to predicate the Board's jurisdiction. Therefore, whether or not the ARIADNE utilized its foreign crew to load and unload passengers' baggage and ship's stores is not material to the issue, since such activities bear simply on the question of "contacts" and such theory has been repudiated. As the Court said, such a theory would require that:

> . . . the Board inquire into the internal discipline and order of all foreign vessels calling at American ports. . . . [E]nforcement of Board orders would project the courts into application of sanctions of the Act to foreign flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice. **McCulloch v. Marineros de Honduras,** supra, at p. 19

Petitioner would advocate, because these certain activities were performed by employees of the foreign vessel, that the trial court lost its jurisdiction. This is the precise evil the court envisioned in **McCulloch v. Marineros de Honduras**, supra, and why it followed the aforementioned quotation with:

> The question, therefore appears to us more basic; namely, whether the Act as written was intended to have **any** application to foreign registered vessels employing alien seamen. (Emphasis supplied) **McCulloch v. Marineros de Honduras**, supra, at p. 19

The Court held "NO". A more definite pronouncement by the Court of what action would be necessary for Congress to bring such foreign vessels within the jurisdiction of the Board cannot be imagined. Congress has declined to act showing that it does not want foreign flag vessels and crews subjected to the jurisdiction of the Board, and further, that it is aware of the monstrous diplomatic and international problems such jurisdiction would beget.

2) The "activities" complained of are "maritime operations" and interference therewith would affect the 'internal affairs' of the foreign flag vessel.

The fact that **Benz-McCulloch-Incres** is not limited by such descriptive phrases as "maritime operations" or "internal affairs" was fully discussed in sub-paragraph 1 of this section. It is clear that:

> . . . the Act does not apply to foreign-registered ships employing alien seamen. **Incres S.S. Co. v. Maritime Workers Union,** supra, at p. 26.

Accordingly, the attachment of such illusory phrases as "maritime operations" or "internal affairs" cannot invest the Board with jurisdiction where Congress has failed to act initially.

Even assuming for purposes of argument that the **Benz-McCulloch-Incres** decisions could be limited by such phrases, the instant cause is clearly still within their purview. The term "maritime operations" is a broad term, defined repeatedly with respect to activities just like those complained of here, and is the subject of a vast body of law. It is not a term, as Petitioner tries to advocate, which "means the manning of the ship as it plies the seas from port to port." (Petitioner's Brief p. 16); nor is there truly a sharp dividing line or functional distinction between "maritime operations" and "longshore work." Maritime operations quite simply cover the management of the vessel, the loading thereof, the care of its equipment and cargo, and the performance of any task essential to enable it to accomplish its purpose on navigable waters. Petitioner, of all people, should be familiar with the scope of this term.

Not only are the activities at issue here "maritime operations," but any interference with them would involve the "internal affairs" of the ARIADNE. It is undisputed that the crew of the ARIADNE is foreign and signed under Ship's Articles of the Republic of Liberia. Pursuant to these Articles, and as a part of their employment, such alien seamen are required to load and unload

passengers' baggage and ship's stores. Their wages were contracted in light of the ship's articles they are governed by.

Petitioner's interference with the "internal affairs" of the ARIADNE is obvious. Whether the picketing is construed as a coercive tactic to require ARIADNE to pay its employees "a wage" commensurate with that of the Union members or, whether it is construed as an attempt by the Union to force the ARIADNE to replace its employees with Union members (A.41a-42a), it is an infringement upon the contract of employment of the foreign crew and therefore an interference with the "internal affairs" of the ARIADNE.

In short, not only did Petitioner's activities threaten interference with the "maritime operations" of the ARIADNE, but they also could have directly affected her "internal affairs". These are the specific dangers the Court considered when it rejected the "contacts" theory as a proper basis upon which to predicate the Board's jurisdiction. The Board does not have jurisdiction of this cause.

3) Labor Board jurisdiction over the maritime operations of the foreign flag vessel would have extraterritorial effect.

The maritime operations (ship's stores and passenger's baggage) of which Petitioner complains are intimately connected with the ship, and continue whether the ship is in an American port, a foreign port, or on the high seas. Accordingly, there is the continuing danger that differing local laws will be applied to these activities. As the Court, in **Lauritzen vs. Larsen**, 345 US 571 (1952) at p. 581, so adequately observed:

> The virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. **If to serve some immediate interest,** the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that multiplicity of conflicting and overlapping burdens would blight international carriage by sea. (Emphasis supplied).

The fear of multifarious interference with the employment contracts and ship's articles of the world's shipping is basic. Not only would the interference which Petitioner advocates become a burden on "international carriage by sea", but it presents the threat of retaliation by foreign nations. Since the position advanced by Petitioner has a direct effect on the employment contracts of alien seamen it would lead not only to displacement of foreign seamen but to reduction in wages to these foreign crews. Immediate steps by other maritime nations against American seamen would be the logical result. This is the effect the court prevented by its decisions in **Benz-McCulloch-Incres.**

Notwithstanding the foregoing, it still must be remembered that Congress has refused to subject foreign registered vessels employing alien seamen to the jurisdiction of the Board. That Congress has this power, if it chooses to exercise it; when a foreign ship voluntarily enters the territorial limits of the United States is accepted. But, Congress has not so acted. Since it has declined to act, arguments directed to the justification of an act which doesn't exist are of no avail.

POINT II

THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION DO NOT PROTECT UNLAWFUL PICKETING.

The Petitioner-Union attempts to argue justification for its actions by relying on the Freedom of Speech provision of the Constitution. The fallacy of this argument is that the court enjoined the Union from committing a tort, acts in derogation of the rights of the Foreign Flag Vessel.

A] Absent Prior Notice to the Proprietor Picketing Is Prohibited by State Law.

Pursuant to the laws of the State of Florida, a labor union, or individuals purporting to represent a labor union, may pursue their objectives by picketing. **Fountainebleau Hotel Corp. v. Hotel Employees Union,** 92 So.2d 415 (Fla.1957). Florida has recognized the right to picket as a valuable tool of labor unions and employees to obtain **legitimate** labor objectives:

> It cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employee and the public. **Fountainebleau Hotel Corp., v. Hotel Employees Union,** supra, at p. 418.

Even assuming for purposes of argument that Petitioner's objective or purpose was not illegal, its failure to comply with the state's policy is ground for injunctive restraint. Pursuant to this policy, the State has required that the employer be notified prior to picketing of the object sought to be accomplished by the picketing and that he be afforded a reasonable opportunity to negotiate whatever differences or impediments there may be to accomplishing the objective of such picketing. **Fountainebleau Hotel Corp. v. Hotel Employees Union,** supra; **Sax Enterprises v. Hotel Employees Union,** 80 So.2d 602 (Fla.1955). There was no notification here. Remember no Union member had sought employment by ARIADNE.

That the right to picket is subject to reasonable restrictions is not subject to dispute. **Hughes v. Superior Court of California,** 339 US 460 (1950). To require a union, which does not represent one single employee, to deal honestly and fairly with the employer and the public, is such a reasonable restriction.

Picketing by a labor union carries with it the threat that other organizations will refuse to deal with the proprietor until the asserted "labor dispute" is settled. Where no real "labor dispute" exists, and more importantly where no opportunity has been afforded the proprietor to negotiate any alleged differences, the union's right to picket does not exist.

Reason, decency and law demand that a proprietor be advised, prior to interfering with his business, of the object which the union seeks to achieve and be given a reasonable opportunity to negotiate any differences. The record is devoid of any proof of notice. Absent proof by the Union of such notice, their picketing is illegal under state law and subject to being enjoined.

The proceeding in this matter from the entry of the temporary injunction to the entry of the permanent injunction covered many months. The Union never sought to introduce any evidence concerning wages, employees, or working conditions which would bear on the validity of its alleged "labor dispute."

B] Acts Which Are Beyond The Legitimate Interest Of A Labor Union Are Enjoinable Interference With Proprietor's Business.

The State of Florida has consistently recognized a lawful business as a property right, unlawful interference with which may be enjoined. **N.A.A.C.P. v. Webb's City, Inc.,** 152 So.2d 179 (Fla.2d Dist. 1963) and **Young Adults for Progressive Action, Inc., v. B & B Cash Grocery Stores, Inc.,** 151 So.2d 877, (Fla. 2d Dist. 1963). Petitioner is a longshoremen's union which picketed ARIADNE with signs alleging refusal to maintain adequate safety standards, and then signs alleging that the foreign vessel paid her employees substandard wages. Handbills were also distributed which charged the ARIADNE with being unsafe; nothing being said as to wages or a purported labor dispute.

The hearing for the injunction came on upon a verified complaint that:

> Neither the defendant nor any of its members is employed to perform any work in connection with the operation of the cruise ships which are owned and operated by the plaintiffs . . . and defendant does not represent any of the employees who operate the ships. Furthermore,

neither the defendant nor its members holds themselves out for any employment in the operation of these ships or either of them. (A.4a).

Upon the verified complaint, argument of counsel, and testimony, the court rendered its decision that there was no labor dispute, and further that Petitioner's actions were in violation of Florida law, were causing ARIADNE irreparable injury, and were therefore enjoinable. The court in finding that no labor dispute really existed chose to believe the verified complaint of ARIADNE that the Union had no legitimate interest in her activities and that this picketing was a mere pretext. Since Petitioner had no legitimate interest in the activities of ARIADNE, its actions were wrongful. The Foreign Flag Vessel's business was suffering irreparable harm thereby and the injunction was properly issued.

Petitioner tries to assert however, that since there was no finding of what, exactly, was its objective or purpose that the injunction cannot be sustained. The court recognized Petitioner's purpose to be the displacement of foreign seamen from certain jobs and the substitution of union members when it said (A.41a):

The Court: What is your purpose here?

Mr. Gopman: To get them to stop the ships—

The Court: To hurt the business of these foreign flag companies until it hurts so bad that they are going to, for the purpose of loading and unloading, use your help? And if they sign a contract with you to use your help, then your problem is over, isn't it? (A.41a).

CONCLUSION

For all the reasons stated, the judgment should be affirmed.

December, 1969.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 24 day of December, 1969, to Waldman & Waldman, Attorneys for Petitioner, at 501 Fifth Avenue, New York, New York 10017.

By Richard M. Leslie
RICHARD M. LESLIE

IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

Petitioner,

v.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

I.

Respondents' Unfounded Excursions Beyond the Record

Much of respondents' Statement of the Case is totally unsupported by the record. Inasmuch as the critical evidence consists of the relatively brief testimony of but a single witness, these departures from the record are readily apparent:

1. Respondents assert that the SS Ariadne carried no cargo whatsoever, that all the work involved in loading

and unloading ship's stores and passengers' baggage was performed by the ship's crew, and that no American residents were hired "to do longshore work in American ports" (Br. 2-4).[1] The only evidence in the record squarely contradicts these claims.

The sole witness in this case testified flatly that the "type of work" which the pickets sought to publicize consisted of "Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage." He further testified that such work was in fact performed both by "employees of the ship" and "by outside labor" (A. 44a-45a). This evidence stands uncontradicted. Neither through cross-examination nor other means did respondents' counsel seek to challenge it. There is no state court finding to support respondents' present unsubstantiated claim, and the opinion of the District Court of Appeal described the picketing as a publicization of the payment of substandard wages for work by American residents (A. 52a).

Respondents rely on testimony given in another case, before another judge, concerning another company, and involving other issues (Br. 3). That testimony apparently related to work performed by the witness' employer, Eastern Steamship Lines, Inc. There is no indication that any representative of respondents testified as to the operations carried on by respondents or by contractors other than Eastern Steamship Lines, Inc. Nor is there any indication in this record that the trial judge herein relied on anything occurring in the *Eastern Steamship Lines* case or that the testimony in that case was even called to his attention. Totally unfounded, therefore, is the assertion (Br. 4) that the "true facts" were pointed out by the record herein to the Florida courts.

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[1] Numbers in parenthesis preceded by the letters "Br." refer to page numbers in respondents' brief.

2. Respondents aver that the members of the Ariadne's crew are "covered by Ship's Articles of Liberia" and "pursuant to these Articles, and as a part of their employment," they are "required to load and unload" ship's stores and baggage (Br. 2, 12-13).

Respondents' complaint, unsubstantiated by any evidence, does allege that the crew is governed by Liberian Ship's Articles (A. 5a). But there is neither allegation nor proof as to the terms or scope of those Articles. There is nothing whatsoever to warrant the assertion that loading and unloading ship's stores and baggage was "pursuant to" or "required" by these Articles.

3. The record fails to establish mootness as to the owner of the SS Bahama Star (Br. 2). Neither the circumstances nor the bona fides of the alleged transfer of ownership have been judicially explored or considered. Moreover, both respondents were required to furnish a surety bond (A. 17a, 46a, 54a). In the event of reversal by this Court, petitioner is entitled to pursue its remedies against that bond. *Liner* v. *Jafco, Inc.*, 375 U.S. 301.

4. Respondents claim that the Union first picketed Eastern Steamship Lines with safety signs, then, when that was enjoined, used the same safety signs with a mere change of name to "Ariadne", and only after this proved futile, shifted the message on its signs to "wages" (Br. 9). Their contention appears to be that the area standards picketing was a "mere pretext" and the Union's true objective was to force the assignment of the baggage and ship's stores work to ILA members (Br. 9).

Were this so, it would only serve to confirm the NLRB's preemptive jurisdiction, for it would posit a classic Section 8(b)(4) violation. The contention, however, is not only totally unsupported by anything in the record, the actual

sequence of events is demonstrably different from that stated in respondents' brief.

The evidence in this record indicates that the area standards picketing of these respondents commenced at least as early as the safety picketing (A. 44a-45a). And since respondents find the *Eastern Steamship Lines* case so illuminating, it is not amiss to note that the record in that case establishes that area standards picketing was directed at the longshore operations of the SS Ariadne and SS Bahama Star before there was any picketing of any kind against the two corporate respondents herein.

Petitioner first picketed Eastern Steamship Lines in May 1966, in the belief that Eastern was responsible for all longshore work relating to the two vessels. Eastern sought a temporary restraining order, and a hearing was held on May 20, 1966. At that hearing, Eastern took the position that it was the wrong party and that petitioner's grievance was against the foreign steamship lines. In the course of that hearing, Eastern's counsel (as respondents' brief notes (Br. 3), the same counsel representing respondents throughout the present litigation) described the picketing as follows:

> "Mr. Leslie: . . . This is the wrong person that is walking up and down in front of Eastern's place of business and saying Eastern maintains substandard wages and Eastern has defective and unsafe ships. That is what they are saying." [2]

The complaint in the case at bar alleges that picketing of respondents did not begin until May 23, 1966 (A. 4a), three days after the court hearing in *Eastern Steamship*

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[2] *Eastern Steamship Lines, Inc.* v. *International Longshoremen's Assocation, Local 1416,* Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, No. 66C-5298; transcript of hearing of May 20, 1966, p. 8.

Lines and after petitioner had been advised that respondents, not Eastern, were responsible for the longshore work on the two vessels and for the wage rates applicable to such work.

The sequence of events is thus clear and quite different from that asserted in respondents' brief. Petitioner publicized the failure to observe area wage standards for longshore work on the SS Ariadne and SS Bahama Star from the moment its picketing began, first against Eastern Steamship Lines and then against respondents. The claim of afterthought is not only unfounded on this record, it is factually untrue.

5. It is somewhat strange, to say the least, to find respondents seeking to derive advantage from an alleged failure by the Union to present additional evidence of the economic conditions underlying the labor dispute, between the grant of the temporary injunction and the grant of the permanent injunction (Br. 4, 17). There was no trial evidence by either party simply because respondents moved for and obtained summary judgment. The Union unsuccessfully opposed this motion (A. 47a), on the ground that the factual issues merited full evidentiary development. The fact that petitioner was denied any subsequent opportunity to amplify the evidence introduced at the hastily scheduled hearing on the application for a temporary restraining order can hardly support an inaccurate contention that it never sought to submit such evidence.

The procedural history of this case only serves to emphasize the importance of upholding the preemptive jurisdiction of the NLRB. In the National Labor Relations Act, Congress has established a carefully drawn series of procedural safeguards embodying assurances of adequate notice, hearing, compulsory attendance of witnesses, find-

ings and similar staple protections. Preliminary injunctive relief may be sought only by the Board, not by any private party, and must be followed by a Board hearing on the complaint. The ultimate disposition of the proceeding is determined by the evidence in the record before the Board and not on the typically inadequate record on the hearing for interim relief. NLRA, Sections 10 and 11, 29 U.S.C. §§ 160 and 161.

Sharply contrasting are the procedures of the Florida courts in this case. With only a minimal hearing following immediately upon service of the complaint, with no evidence at all on the part of plaintiff, with no trial, and with no judicial findings at any stage of the proceedings, a permanent injunction has issued forbidding any picketing which publicizes respondents' payment of substandard wages for longshore work. To permit such a result is to frustrate and defeat not only the substantive rules of federal law, but its vital procedural features as well.

6. Respondents erroneously assert that the Union has admitted the correctness of the injunctive provisions against the "safety" signs as well as the trial court's jurisdiction over this aspect of the controversy (Br. 6). That is not so. For reasons unrelated to the state court's jurisdiction or the correctness of its order, the Union expressly abandoned its appeal from that portion of the injunction in the course of the state proceedings; and, therefore, the point was not preserved for federal review.

II.

Respondents' Misconceptions as to the Scope of the National Labor Relations Act and the Jurisdiction of the NLRB

Although respondents' brief is replete with factual misstatements wholly unsupported by the record, even on respondents' version of the case state courts are without jurisdiction over this controversy.

For respondents admit that ship's stores and passengers' baggage are regularly loaded and unloaded aboard the SS Ariadne in Florida ports. They admit their own responsibility for these operations. And they do not challenge the truthfulness of the message contained on the picket signs, that the wage rates for this work fall below those prevailing in the area. This is more than sufficient to establish the NLRB's preemptive jurisdiction.

Respondents' suggestion, unsupported by any authority, that loading and unloading baggage and ship's stores does not constitute longshore work is both misplaced and erroneous. Not only is this an issue to be decided under federal law through the exclusive decisional competence of the NLRB, it is an issue which the NLRB has already considered and decided, adversely to respondents' contention. Thus, for example, the unit description in the Board's certification of the longshore unit for the Port of New York specifies

> "All longshore employees engaged in work pertaining to the . . . loading and unloading of cargoes, including mail, ship's stores and baggage. . . ." [3]

[3] *New York Shipping Association, Inc.*, 116 NLRB 1183, 1188. As noted at page 28 of our principal brief, the employers covered by this certification include the major foreign flag steamship lines.

Similarly, in *International Longshoremen's and Warehousemen's Union, Local 13 (Princess Cruises Co.)*, 161 NLRB 451, the Board assumed Section 10(k) jurisdiction over a dispute concerning the assignment of work "involved in the handling of the baggage of passengers embarking on or debarking from the vessel" a foreign cruise ship (161 NLRB at 453). The Board awarded the work to longshoremen hired by the foreign steamship company, on the basis of established industry practice under which baggage handling traditionally fell within the scope of longshore work.

Apparently recognizing the futility of their conclusory assertion that no longshore work was performed on their vessels, respondents argue that all longshore work, as well as any other operation "essential to enable . . . [the vessel] to accomplish its purpose on navigable waters" is embraced by the concept of "maritime operations", as used by this Court in its *Benz-McCulloch-Incres* decisions (Br. 12). This argument would, of course, also exclude from NLRB jurisdiction the full range of ship repair work, even if performed exclusively in American drydocks.

Respondents' contention has been answered in our principal brief. Here it is sufficient to note simply that their argument is not only unsupported by authority, it is totally at war with industrial reality throughout the world. The task of loading and unloading cargoes, including ship's stores and baggage, is functionally distinct from manning or operating the ship. And these two types of work are traditionally and regularly performed by different trades or groups of workers the world over. The longshoreman or dockworker is separate and distinct from the seaman, whether the port be New York, London, Rotterdam, Venice, Haifa, Leningrad or Buenos Aires.

In the United States this industrial dichotomy is manifested by NLRB decisions such as those cited above and the collective bargaining agreements which they reflect and mandate. In other nations it is evidenced by such international enactments as the Protection against Accidents (Dockers) Convention, which has been adopted by leading maritime powers and which expressly covers workers engaged in "all or any part of the work performed on shore or on board ship of loading or unloading any ship. . . ." [4]

It is because of this well-recognized distinction between maritime operations and longshore operations—and the personnel who perform each—that respondents are unable to cite any foreign labor relations laws, Liberian or otherwise, which would purport to regulate longshore work conducted exclusively in ports of other nations. And that is why in this area there is not the conflict with foreign laws and foreign regulations which the Court perceived in the seagoing maritime field.

Even if respondents' American longshore work were covered by the crew's Ship's Articles, a proposition unsubstantiated by the record, respondents' position would not be advanced. The fact that work performed exclusively in American territories may be covered by a private, self-serving agreement is a far cry from establishing conflict with foreign laws. A foreign shipping company and its crew cannot combine to insulate shore-based work in the United States from American regulatory legislation. Respondents, on their own unproven version of the facts, are no different from any foreign employer using alien employees to perform work wholly within the United States. Such work, as demonstrated in our principal brief, is covered both by the

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[4] This Convention is published in *The International Labour Code, 1951* (ILO 1952), p. 451 *et seq.*

federal labor law and by other federal regulatory and social welfare enactments.

III.

Respondents' Attempt to Obfuscate the Clear Constitutional Impediment to the Injunction Granted Herein by the Florida Courts

It is difficult to analyze respondents' argument on the free speech issue because it is marked by such a welter of self-contradiction. Nowhere is this more evident than in respondents' hopelessly inconsistent effort to decide precisely what objective they wish to attribute to the Union picketing.

On the one hand, respondents proclaim that they performed no longshore work and that neither the Union nor its members held themselves out for employment on their two vessels or ever sought such employment, thus leading to the conclusion that the picketing was a "mere pretext to conceal the absence of any labor dispute" (Br. 9, 17-18). But in the very next breath, respondents urge that the purpose of the picketing was to coerce them to displace other employees from certain jobs and award this work to the Union's members (Br. 9, 18).

However, respondents cannot escape the fact that no evidence was presented to support either of these inconsistent propositions. Thus they are reduced to claiming that the judge "chose to believe the verified complaint", notwithstanding the denials in the verified answer (A 18a-21a) and the total failure of proof, and that the trial court somehow "recognized" petitioner's purpose (Br. 18). But a trial judge's speculation cannot cure a total absence of proof (Cf. *Thompson* v. *Louisville,* 362 U.S. 199), particularly when the issue is squarely drawn not only in the

pleadings but by the flat denials of Union counsel at the only hearing held in the cause (A. 39a).

Respondents also argue that the Union failed to give adequate notice of its grievance and reasonable opportunity to negotiate whatever differences might exist between the parties, citing the decisions in *Fountainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415 and *Sax Enterprises* v. *Hotel Employees Union,* 80 So. 2d 602, both of which were reversed, on preemption grounds, by this Court (*sub nom. Hotel Employees Union* v. *Sax Enterprises,* 358 U.S. 270).[5] Nowhere in the instant case does any state court suggest, let alone hold, that failure to give notice or negotiating opportunity was the infirmity in the Union's picketing or the reason for denying petitioner the protection of the First Amendment. And, of course, there is not the slightest evidence to support any such contention. Moreover, had the claim been advanced below and invoked by any state court, it would have been subject to serious challenge, factually, legally and constitutionally. In the posture of the case from its inception, no such opportunity was afforded petitioner.

1. As a factual matter, respondents did receive actual advance notice of the Union's position, through the area standards picketing against Eastern Steamship Lines which preceded by many days the picketing of respondents (see pp. 4-5, *supra*). Indeed, at the hearing in the *Eastern*

[5] The other two Florida decisions, cited at page 17 of respondents' brief, deal with picketing designed to achieve a change in the racial proportions of the employer's work force. These injunctions, justified by the Florida courts on the authority of *Hughes* v. *Superior Court,* 339 U.S. 460, rest on an "unlawful objective" unrelated to anything in the case at bar. Moreover, this Court vacated the judgment in *NAACP* v. *Webb's City, Inc.,* 152 So. 2d 179, on plaintiff's representation that the injunction would be set aside by the trial court. 376 U.S. 190.

case, Union counsel announced, on the record, the Union's intention to picket respondents for failure to meet area wage standards.[6] There is no indication that respondents made any effort to satisfy this protest or even to discuss it with representatives of the Union.

2. As a matter of state law, the applicability of the proposition invoked by respondents is highly questionable. Where the picketing is organizational or seeks recognition of the union and the commencement of bargaining relations (as in *Fountainebleau* and *Sax*), then the opportunity for negotiations may have some meaning. But here the Union did not claim to represent respondents' employees or seek recognition as bargaining representative. Under the circumstances, it is difficult to see that the "opportunity to negotiate . . . differences" (Br. 16) has any significance or applicability.

3. As a matter of federal Constitutional law, the precondition to picketing relied upon by respondents is of dubious validity, to say the least. Apparently based on considerations of "decency", it would require a "fair" and "reasonable" opportunity to negotiate before picketing could commence. Such a vague, nebulous standard, unrelated to any unlawful objective or to any means (such as violence) traditionally subject to state control, hardly satisfies the type of precise, narrowly drawn rule which this Court requires where a species of free speech is sought to be abridged. *Thornhill* v. *Alabama*, 310 U.S. 88; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Edwards* v. *South Carolina*, 372 U.S. 229; *Cox* v. *Louisiana*, 379 U.S. 536; *Gregory* v. *Chicago*, 394 U.S. 111.

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[6] See footnote 2, *supra*, transcript of May 20, 1966 hearing, pp. 16-17.

But we revert to the basic premise: totally lacking is either proof or judicial invocation in this case of the theory now relied upon by respondents. Thus even were the alleged state requirement to be deemed valid and applicable to this area standards picketing, there is no reason to assume that this was in fact the basis for the decision of the Florida courts or whether, to the contrary, the state courts relied upon some other impermissible theory. In such a posture, a judgment abridging a form of expression may not stand. *Gregory* v. *Chicago, supra; Stromberg* v. *California,* 283 U.S. 88.

January, 1970.

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SUPREME COURT OF THE UNITED STATES

No. 231.—October Term, 1969

International Longshoremen's Local 1416, AFL–CIO, Petitioner, *v.* Ariadne Shipping Company, Limited, et al.	On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[March 9, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

The question presented here is whether the National Labor Relations Act, 29 U. S. C. § 151 *et seq.*, pre-empts state jurisdiction to enjoin peaceful picketing protesting substandard wages paid by foreign-flag vessels to American longshoremen working in American ports. The Florida courts held that there was no pre-emption, citing *McCulloch* v. *Sociedad Nacional*, 372 U. S. 10 (1963), and *Incres Steamship Company* v. *International Maritime Workers Union*, 372 U. S. 24 (1963). We granted certiorari. 395 U. S. 814 (1969). We reverse.

In 1966 the respondents, a Liberian corporation and a Panamanian corporation, operated cruise ships to the Caribbean from Port Everglades and Miami, Florida. Respondent Ariadne Shipping Company operated the *S. S. Ariadne*, of Liberian registry, with a crew subject to Liberian ship's articles. Respondent Evangeline Steamship Company operated *S. S. Bahama Star*, of Panamanian registry, with a crew subject to Panamanian ship's articles. The uncontradicted evidence showed that "[l]oading of the ships, stowage and loading

of automobiles, loading cargo and ship stowage" occurred whenever either vessel berthed at Port Everglades or Miami, "[p]art of it [performed] by employees of the ship and some of it by outside labor." The petitioner is a labor organization representing longshoremen in the Miami area. Although none of those doing the longshore work for the ships belonged to the union, whenever either vessel docked at Port Everglades or Miami in May 1966, petitioner stationed a picket near the vessel to patrol with a placard protesting that the longshore work was being done under substandard wage conditions.[1] Respondents obtained temporary injunctive relief against the picketing from the Circuit Court of Dade County.[2] That court rejected petitioner's contention that the subject matter was pre-empted, holding that under *McCulloch* the picketing was beyond the reach of the regulatory power of the National Labor Relations Board, and hence

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[1] A picket was also stationed in front of the terminal through which passengers embarked and disembarked. This picket carried a sign alleging that the ships were unsafe and passed out handbills to the same effect.

[2] The injunctive order was in four paragraphs. Paragraphs 1 and 2 prohibited picketing with signs, or distributing handbills stating, alleging or inferring that the vessels were unsafe. The petitioner abandoned its appeal from these provisions and they are not before us. Paragraph 4 was set aside on appeal. See n. 4, *infra*. Paragraph 3 therefore is the only provision under review in this Court. It prohibits petitioner from

"Picketing or patrolling with signs or placards indicating or inferring that a labor dispute exists between [respondents] and [petitioner], by any statement, legend or language alleging [respondents] pay their employees substandard wages."

Initially petitioner directed the picketing not at respondents' ships but at Eastern Steamship Lines, Inc., a Florida corporation which acted as respondents' general agent. Eastern obtained an injunction, 211 So. 2d 858 (1968), whereupon petitioner shifted the picketing to the ships themselves.

could be enjoined, since it violated Florida law. The temporary injunction was affirmed by the District Court of Appeal for the Third District of Florida in a brief *per curiam* order citing *McCulloch* and *Incres.* 195 So. 2d 238 (1967). Thereafter the Circuit Court, without further hearing, made the injunction permanent. The District Court of Appeal again affirmed, although noting that the testimony "tended to show" that the picketing was carried on to protest against the substandard wages paid for the longshore work. 215 So. 2d 51, 53 (1968).[3] The Supreme Court of Florida denied review in an unreported order.

McCulloch and *Incres* construed the National Labor Relations Act to preclude Board jurisdiction over labor disputes concerning certain maritime operations of foreign-flag vessels. Specifically, *Incres,* 372 U. S., at 27, held that "maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of § 2 (6) [of the Act]." See also *Benz* v. *Compania Naviera Hidalgo,* 353 U. S. 138 (1957). This construction of the statute, however, was addressed to situations in which Board regulation of the labor relations in question would necessitate inquiry into the "internal discipline and order" of a foreign vessel, an intervention thought likely to "raise considerable disturbance not only in the field of maritime law but in our international relations as well." *McCulloch,* 372 U. S., at 19.

In *Benz* a foreign-flag vessel temporarily in an American port was picketed by an American seamen's union, supporting the demands of a foreign crew for more favor-

[3] The Court of Appeal set aside paragraph 4 of the injunction which prohibited "By any manner or by any means, including picketing or the distribution of handbills, inducing or attempting to induce customers and potential customers of [respondents] to cease doing business with [respondents]." 215 So. 2d, at 52, n. 1.

able conditions than those in the ship's articles which they signed under foreign law, upon joining the vessel in a foreign port. In *McCulloch* an American seamen's union petitioned for a representation election among the foreign crew members of a Honduran-flag vessel who were already represented by a Honduran union, certified under Honduran labor law. Again, in *Incres* the picketing was by an American union formed "for the primary purpose of organizing foreign seamen on foreign-flag ships." 372 U. S., at 25–26. In these cases, we concluded that, since the Act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews. Thus we could not find such an intention by implication, particularly since to do so would thrust the National Labor Relations Board into "a delicate field of international relations," *Benz,* 353 U. S., at 147. Assertion of jurisdiction by the Board over labor relations already governed by foreign law might well provoke "vigorous protests from foreign governments and . . . international problems for our Government," *McCulloch,* 372 U. S., at 17, and "invite retaliatory action from other nations," *id.*, at 21. Moreover, to construe the Act to embrace disputes involving the "internal discipline and order" of a foreign ship would be to impute to Congress the highly unlikely intention of departing from "the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship," a principle frequently recognized in treaties with other countries. *Ibid.*

The considerations which informed the Court's construction of the statute in the cases above are clearly inapplicable to the situation presented here. The par-

ticipation of some crew members in the longshore work does not obscure the fact that this dispute centered on the wages to be paid American residents, who were employed by each foreign ship not to serve as members of its crew but rather to do casual longshore work. There is no evidence that these occasional workers were involved in any internal affairs of either ship which would be governed by foreign law.[4] They were American residents, hired to work exclusively on American docks as longshoremen, not as seamen on respondents' vessels. The critical inquiry then is whether the longshore activities of such American residents were within the "maritime operations of foreign-flag ships" which *McCulloch*, *Incres*, and *Benz* found to be beyond the scope of the Act.

We hold that their activities were not within these excluded operations. The American longshoremen's short-term, irregular and casual connection with the respective vessels plainly belied any involvement on their part with the ships' "internal discipline and order." Application of United States law to resolve a dispute over the wages paid the men for their longshore work, accordingly, would have threatened no interference in the internal affairs of foreign-flag ships likely to lead to conflict with foreign or international law. We therefore find that these longshore operations were in "commerce" within the meaning of § 2 (6), and thus might have been subject to the regulatory power of the National Labor Relations Board.[5]

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[4] We put to one side situations in which the longshore work, although involving activities on an American dock, is carried out entirely by the ship's foreign crew, pursuant to foreign ship's articles.

[5] The Board has reached the same conclusion in similar situations. See, *e. g.*, *International Longshoremen's & Warehousemen's Union, Local 13*, 161 N. L. R. B. 451 (1966); *Marine Cooks & Stewards Union*, 156 N. L. R. B. 753 (1966); *New York Shipping*

The jurisdiction of the National Labor Relations Board is exclusive and pre-emptive as to activities which are "arguably subject" to regulation under § 7 or § 8 of the Act. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 245 (1959). The activities of petitioner in this case met that test. The Union's peaceful primary picketing to protest wage rates below established area standards arguably constituted protected activity under § 7. See *Steelworkers* v. *NLRB*, 376 U. S. 492, 498–499 (1964); *Garner* v. *Teamster Union*, 346 U. S. 485, 499–500 (1953).

Reversed.

Association, Inc., 116 N. L. R. B. 1183 (1956). Cf. *Uravic* v. *Jorka*, 282 U. S. 234 (1931).

Our conclusion makes it unnecessary to consider petitioner's further contention that in the absence of any evidence of an illegal objective, prohibition of peaceful picketing to publicize substandard wages deprived petitioner of freedom of speech in violation of the First and Fourteenth Amendments.

SUPREME COURT OF THE UNITED STATES

No. 231.—October Term, 1969

International Longshoremen's Local 1416, AFL–CIO, Petitioner, *v.* Ariadne Shipping Company, Limited, et al.	On Writ of Certiorari to the District Court of Appeal of Florida, Third District.

[March 9, 1970]

Mr. Justice White, with whom The Chief Justice and Mr. Justice Stewart join, concurring.

I agree with the majority that the Florida courts were in error to conclude that the National Labor Relations Act does not govern relations between the operators of foreign-flag vessels and the American longshoremen who work on such vessels while they are in American ports. However, I would not rest reversal on the conclusion that the union's conduct in this case was " 'arguably subject' to regulation under § 7 or § 8 of the Act." The union's picketing was clearly not proscribed by any part of § 8 of the Act. The only possible dispute could be over whether the picketing was activity protected by § 7 of the Act or whether the picketing was neither protected nor prohibited by the Act and therefore was subject to state regulation or prohibition. If the National Labor Relations Act provided an effective mechanism whereby an employer could obtain a determination from the National Labor Relations Board as to whether picketing is protected or unprotected, I would agree that the fact that picketing is "arguably" protected should require state courts to refrain from interfering in deference to the expertise and national uniformity of treatment offered by the NLRB. But an employer faced with

"arguably protected" picketing is given by the present federal law no adequate means of obtaining an evaluation of the picketing by the NLRB. The employer may not himself seek a determination from the Board and is left with the unsatisfactory remedy of using "self help" against the pickets to try to provoke the union to charge the employer with an unfair labor practice.

So long as employers are effectively denied determinations by the NLRB as to whether "arguably protected" picketing is actually protected except when an employer is willing to threaten or use force to deal with picketing, I would hold that only labor activity determined to be actually, rather than arguably, protected under federal law should be immune from state judicial control. To this extent *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959), should be reconsidered. I concur in the Court's judgment in this case because in my view the record clearly indicates that the peaceful, nonobstructive picketing on the public docks near the ships was union activity protected under the National Labor Relations Act. See *Garner* v. *Teamsters Local 776*, 346 U. S. 485, 499–500 (1953).